

# 2027 Code & International Standard Update Process : Stakeholder Engagement Phase - World Anti-Doping Code

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## Concept #1 – Lack of Intent without Establishing Origin (38)

### Team USA Athletes' Commision

SUBMITTED

Meryl Fishler, Manger (United States)

Sport - Athlete Representative (State the name of the athlete body in Organization name)

1. Proposals 1 and 2. It might be rare but it seems like there could be other ways outside of using scientific/analytical evidence to show intent so only relying on scientific data doesn't seem fair to the athlete. We do not support either proposal.

### World Rugby

SUBMITTED

David Ho, Senior Manager Anti-Doping Operations (Ireland)

Sport - IF – Summer Olympic

Though we would support review/discussion of this area, we find it difficult to evaluate without a clear idea/definition of the nuance implied here between direct or indirect intent.

### Union Cycliste Internationale

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)

Sport - IF – Summer Olympic

The UCI supports WADA's intent to clarify how exceptional a case must be in order for an athlete to demonstrate lack of intent without proving the source.

In that regard, a non exhaustive list of criteria/evidence could be listed through a comment. Scientific/analytical evidence at least must be adduced to rule out direct intent.

Irrespective of the Code consultation process and pending the adoption 2027 Code, we would encourage WADA to publish a list of cases where it considers that «exceptional circumstances» was "correctly" applied.

### National Olympic Committee and Sports Confederation of Denmark

SUBMITTED

Mikkel Bendix Bergmann, Legal Advisor (Denmark)

Sport - National Olympic Committee

## Concept #1 - Lack of Intent without Establishing Origin

The Danish NOC generally supports the notion that the criteria for determining a lack of intent should be clearer and more defined to ensure equal treatment of cases and athletes.

However, we acknowledge that adhering to the specified criteria in the concept may pose challenges for athletes, potentially leading to disparate outcomes and cases influenced by the financial resources of the individuals involved.

### Botswana Football Association

SUBMITTED

Boago Diphupu, Mr (Botswana)

Sport - Other

law suggest intent is a subjective state of mind that must accompany the acts of certain crimes to constitute a violation.

### **NZ Rugby**

SUBMITTED

Rebecca Giordano, Senior Legal Counsel - Regulations & Compliance (New Zealand)  
Sport - Other

In terms of the test/criteria for athletes attempting to prove a lack of intent when they cannot demonstrate the source, we support the second proposal, namely, that athletes be required to rule out direct intent only through scientific/analytical evidence and the period of ineligibility could subsequently and in exceptional cases be two to four years taking all circumstances/evidence into account.

### **International Tennis Integrity Agency**

SUBMITTED

Nicole Sapstead, Senior Director, Anti-Doping (United Kingdom)  
Sport - Other

The ITIA would prefer the first option/proposal as the sanctioning flexibility in option 2 may lead to more inconsistency.

There should remain the possibility of demonstrating a lack of intent without proving source, but that should only be in exceptional circumstances and the bar has to be high. More clarity on the evidence that would clear the bar is needed to assess whether it's a viable option.

### **UEFA**

SUBMITTED

Rebecca Lee, Anti-Doping Team Leader (Switzerland)  
Sport - Other

UEFA supports the development of this concept

Lack of intention without establishing the source of the Prohibited Substance is a true challenge for each athlete. In recent years, the Court of Arbitration for Sports and Sports Governing Bodies have analysed more and more cases involving the "Narrowest corridor" through which an athlete must pass to discharge his burden of proof (CAS 2019/A/6313, *Lawson v. IAAF*, CAS 2016/A/4534, *Maurico Fiol Villanueva v. FINA*, CAS A1/2020, *Shayna Jack v. Swimming Australia & ASADA*) which created raising inequality with respect to sanctions.

Like other Sport Governing Bodies, UEFA is no exception to this challenge and would tend to see a much fairer approach if athletes would be required to rule out through scientific/analytical evidence that the violation could have been directly or indirectly intentional. There are cases in which despite all the efforts to identify the substance, athletes are simply not able to do so.

Similarly, UEFA is concerned about a raising number of potential contaminations through specified substances for which the source is not identifiable despite all due care. While intent is not determinant for specified substance, UEFA considers that a similar approach (involving scientific/analytical evidence to prove that it was most likely an unintentional contamination) shall be possible for specified substances enabling athletes to reduce their ineligibility from 2 years to a reprimand even when the origin of the substance cannot be identified.

### **Sport NZ**

SUBMITTED

Jane Mountfort, Principal Policy and Legal Advisor (New Zealand)  
Public Authorities - Government

This submission is made on behalf of Sport New Zealand, which is the Crown agency responsible for advising the New Zealand government on anti-doping policy and ensuring New Zealand's compliance with the International

Sport NZ recognises benefits in adjusting the strict liability system in circumstances where its application is disproportionate to its objectives, particularly where there is a lack of intent by an athlete to commit a doping violation. However, rules that relax the regime need to be capable of practical application by athletes or other persons subject to the Code, to enable that benefit to be real rather than illusory.

However, as a general proposition, proving a negative is extremely difficult. Accordingly, we are concerned that to take the benefit of the less harsh sanctioning regime, an athlete being required to “rule out” through scientific/analytical evidence that a violation could have been directly or indirectly intentional could be unavailable in practice.

At the very least, the meaning of “ruling out” in terms of legal burdens requires more precise drafting.

In stating our concern, we are mindful that scientific evidence probative of an athlete’s lack of intention typically pertains to a product to which the athlete has been exposed being proven an unwitting source of the prohibited substance. Obtaining probative evidence would in many cases depend on the athlete taking samples of potential source products contemporaneously with the timing of the original test sample taking. However, athletes may not have access to advice on which potential contaminants (of the plethora of substances to which they come into contact daily) to consider, nor appropriate sample storage methods that avoid degradation.

In addition, we are concerned that the proposal could encourage the largely clean athlete body tending towards proactively collecting and retaining samples of products or body tissues (or even simply noting products around them and nutritional inputs) as best they can at the time of testing, in case of an adverse analytical finding. Not only would this defensive culture shift be an excessive burden but the evidence gathered would likely be so haphazard in its coverage that the chance of a genuinely clean athlete having identified or sampled the actual contaminant would be small.

WADA may wish to consider alternative tests such as:

the athlete to identify a credible unintentional source relevant to their circumstances for which the method of consumption/exposure is corroborated by credible evidence (which could include scientific evidence).

Further, we suggest that where an athlete demonstrates that a violation was likely to have been unintentional (a circumstance only likely in exceptional circumstances), a less severe penalty regime should apply as a matter of course rather than in exceptional circumstances.

### Council of Europe

Council of Europe, Sport Convention Division (France)

Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

### (basically) supported

This concept is essentially/basically approved and supported. Like WADA, it is needed to concretise the definition and the existence of the requirements for intent. Leading CAS case law must be taken into account. The requirements for the application of direct and indirect intent should be clarified using examples to keep the strength of the sanctioning system (e.g exceptional circumstances/ scientific/analytical evidence);

Partly, a general question is raised on the terms of fairness in relation with the level and financial resources of the athletes.

### Organizacion Nacional Antidopaje de Uruguay

José Veloso Fernandez, Jefe de control Dopaje (Uruguay)

NADO - NADO

SUBMITTED

No comments. Approved 1st stage

## Agence française de lutte contre le dopage

Adeline Molina, General Secretary Deputy (France)

NADO - NADO

SUBMITTED

Il est nécessaire d'offrir aux OAD et aux panels un cadre clair permettant de définir, de manière suffisamment prévisible, le niveau de sanction qui doit être appliqué lorsque le sportif peut établir scientifiquement que la violation n'était pas intentionnelle.

Permettre aux sportifs de démontrer leur absence d'intention au moyen de seules preuves scientifiques (1), c'est-à-dire sans tenir compte des circonstances, pourrait constituer une brèche, puisque cela permettrait aux tricheurs d'élaborer des stratégies, voire des protocoles permettant la réduction de la sanction, grâce à une simple concentration urinaire qui, à elle seule, n'éclaire pas le comportement adopté ou à une analyse capillaire dont la pertinence est limitée.

Prendre en compte des circonstances exceptionnelles dans ces cas (2), qu'il faudrait cependant définir, et il semble mieux adapté de prendre en considération l'ensemble des circonstances de l'affaire pour déterminer la sanction sous le contrôle du juge.

Une alternative pourrait-être d'élever ou d'établir des limites de décision pour certaines substances, ou de créer des régimes particuliers pour certaines concentrations.

## Anti-Doping Sweden

Jessica Wissman, Head of legal department (Sverige)

NADO - NADO

SUBMITTED

ADSE supports a review of this issue and is encouraging a clarification/guideline for the applicable regulations. ADSE also considers that the application of "direct and "indirect" intent should be clarified/defined in the Code and include examples.

## NADA

NADA Germany, National Anti Doping Organisation (Deutschland)

NADO - NADO

SUBMITTED

1. Athletes would be required to rule out through scientific/analytical evidence that the violation could have been directly or indirectly intentional;

Comment NADA: Disagree

- Recent case law by CAS defined direct and indirect intent, however no definition is included in the Code so far.
- Indirect intent can appear in cases where the Athlete can demonstrate the source of the substance, however did not use the substance for doping reasons (e.g. dismissed TUE)
- Also indirect intent can appear in cases, where the athlete cannot demonstrate the origin of the substance, which leads to exceptional circumstances (such as possible contamination through skin). It seems unfair that these exceptional circumstances do not find appraisal if not ruled out completely.

or 2. Athletes would be required to rule out direct intent only through scientific/analytical evidence and the period of ineligibility could subsequently and in exceptional cases be two to four years taking all circumstances/evidence into account.

Comment NADA: Agree

- See above
- Further explanation may be needed for "exceptional circumstances".

### **NADA Austria**

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

NADA Austria welcomes the **Concepts #1** and **#2** of the Code Drafting Team according to the WADC 2027.

### **Finnish Center for Integrity in Sports (FINCIS)**

Petteri Lindblom, Legal Director (Finland)  
NADO - NADO

SUBMITTED

It is needed to concretise the definition and the existence of the requirements for intent. Leading CAS caselaw must be taken into account. The requirements for the application of direct and indirect intent should be clarified using examples to

### **NADO Flanders**

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

There is basic support for this proposition, but some reservations remain. When implementing a provision allowing to reduce the sanction based on lack of intent without establishing the origin of the substance, it will need to be clarified what consists of scientific or analytical evidence. Still there will be a wide appreciation in what is considered scientific evidence, which again can be cause for jurisprudence that lacks consistency. For scientific evidence, this can lead to inequality for lower level athletes that do not have financial means or scientific support. There would be need for establishing a rule that does not have the same strict burden of proof on lower level athletes. High level athletes can have more access to resources and scientific experts assisting them in their defense. Requiring the same level of proof from lower level (amateur) athletes, can be cause for a manifest inequality of arms, when confronted with a case where the antidoping organization is in the position that they do not have to prove the intent, but can rely on the mere rebuttable presumption of intent. This is partly already covered for recreational athletes in the current Code. However, even a recreational athlete does have to raise a more plausible scenario as opposed to a doping scenario, and the doping scenario is difficult to rule out without any scientific evidence. Moreover, "intent" also contains a subjective element. By requiring scientific evidence it can have the adverse effect that a hearing panel is limited in its discretion to assess the subjective element. Although it was taken out of the 2021 Code, we still have to keep in mind the ratio legis of the introduction of the concept of "intent" in the Code 2015, namely identifying those athletes who cheat, which again can be undermined by codifying the requirements of scientific evidence because the codification can restrict the discretion of the disciplinary panel.

### **Anti-Doping Norway**

Martin Holmlund Lauesen, Director - International Relations and Medical (Norge)  
NADO - NADO

SUBMITTED

Alternative 2 will require a case-by-case assessment as to what is considered an "exceptional case". This will most likely be interpreted differently in different countries and can lead to differential treatment. We therefore support alternative 1, as we believe this will promote a more equal treatment of athletes.

### **Canadian Centre for Ethics in Sport**

Elizabeth Carson, Senior Manager, Canadian Anti-Doping Program (Canada)  
NADO - NADO

SUBMITTED

The CCES agrees the proposal is a step in the right direction as it is not always possible to identify the origin with certainty. The article would need to be drafted broadly enough to take into account what scientific evidence would be needed to support a given argument, without the limitation of a pre-determined list.

It would also be important to clarify the ADO does not have the burden in such cases.

**ONAD Communauté française**

Julien Magotteaux, juriste (Belgique)

NADO - NADO

SUBMITTED

**General Position – General comments:**

In general and in accordance with previous CAHAMA mandates of May and September, regarding the revision of the WADP, Belgium:

- Supports WADA's repeated commitment to a limited review and update of the Code and International Standards, rather than a full review;
- Asks WADA again, as it committed to doing from the start of the process, for an assessment of the impact of the planned modifications on the resources of stakeholders, on the legislation and on the rights of athletes;
- Supports a flexible approach in general, preferring, wherever possible, the adaptation or adoption of guidelines rather than the revision of the Code and Standards;
- In line with the pillars of the Council of Europe and with the Riga Conference of October 3 on the right to a fair trial, requests that no envisaged modification have the direct or indirect effect of reducing the right to a fair trial, nor the athletes' rights.

Furthermore, also in connection with the right to a fair trial and with the general principle of the separation of powers and in accordance with a common position, discussed at the T-DO LI meeting of October 4, 2023, Belgium considers that it is not normal and legally correct that NADOs must ultimately respond, in terms of compliance, to a decision taken by an independent hearing body. This issue should be taken into account by WADA, probably in the Code, via a clarification of the roles of the actors, but also in the Standard on compliance.

The same observations apply with regard to the adoption of legislation or regulations compliant. The adoption of legislation or regulations is not the responsibility of a NADO. This issue should be taken into account in the revision of the Standard on compliance, in order, on the one hand, to better understand what is (or is not) the responsibility of NADOs and, on the other hand, to avoid any sanction for a NADO or for the athletes for any question in link with the adoption of legislation or regulations.

Finally, regarding general remarks, the Riga conference highlighted the fact that the anti-doping system and rules were became complex, which meant that it took time to explain them to the athletes. In this context, as much as possible, a simplification of the rules would also be desirable and encouraged.

The specific remarks which follow, on the different concepts, per document, are without prejudice to the general position and general comments which precede.

1) the Lack of Intent without establishing origin :

In relation to the question asked for this concept, the athletes may have to prove through scientific/analytical evidence that the violation was not directly or indirectly intentional.

But, it raises a question/problem in terms of equity in relation with the level and financial resources of the athletes.

**RUSADA**

Kristina Coburn, Compliance Manager (Russia)

NADO - NADO

SUBMITTED

1. RUSADA supports this proposal.

2. At this point, it is unclear how to evaluate: a) exceptional cases (the word 'exceptional' necessitates additional remarks and clarification); and b) when the direct intent is established, it is unclear how to apply the sanction reduction in this scenario. In our perspective, the absence of intent cannot be demonstrated partially; there could be either intent or its absence. Whether the new wording of the 2027 Code is treating the 'exceptional case' the same way as the Fault which is depending on its levels.

### Sport Ireland

Melissa Morgan, Anti-Doping Testing and Quality Manager (Ireland)  
NADO - NADO

SUBMITTED

WADA has outlined two options for comment regarding the criteria an Athlete must satisfy to establish a lack of intent without being able to establish the origin of the Prohibited Substance (and thereby get their sanction from four to two years). However, in Sport Ireland's view neither of the two options presented appear very practical based on the information provided to date.

We do not understand what is meant by direct intent and indirect intent. It would be helpful to obtain more detail around how it is envisaged that it would be possible for an Athlete to scientifically prove lack of intent, be it direct or indirect intent. Sport Ireland is not aware that this is feasible in the vast majority of cases. Further, we note the inconsistency that these proposals seek to address, we would suggest that they may in fact lead to more inconsistency.

### Sport Integrity Australia

Chris Butler, Director, Anti-Doping Policy and International Engagement (Australia)  
NADO - NADO

SUBMITTED

We **agree** there needs to be a consistent approach to determine how exceptional a case must be to demonstrate a lack of intent without proving the source and type of evidence that is considered relevant within this context.

However, we **do not agree** with either of the two proposals requiring the Athlete to rely on scientific/analytical evidence to rule out intent.

In relation to the first point, we note the comment to Article 10.2.1.1 was included in the WADC 2021.

o ["While it is theoretically possible for an Athlete or other Person to establish that the Anti-Doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance."]

Following the addition of this comment in the WADC, we have not seen an increase in volume of cases where Establishing Origin of a Prohibited Substance (or lack of intent) has been problematic, or that there has been a lack of consistency in applying the principles.

In relation to the second point, it would be helpful to have further information about the scientific or analytical evidence that is being considered.

It seems unlikely that an Athlete could establish a lack of intent based on scientific or analytical evidence alone. Rather a range of other factors may be considered when establishing origin and intent by an Athlete aside from scientific/analytical evidence. These factors may include evidence from witnesses, documentary evidence (such as prescriptions etc), and the Athlete's actions supporting clean sport behaviours (such as evidence of undertaking supplement and medication checks, completion of education requirements). In dealing with these cases, we rely on our assessment of the evidence as a whole.

In addition to the above, there are also other concerns with obtaining scientific/analytical evidence, including chain of custody and cost issues when an Athlete tests any product they purportedly used.

If the Drafting Team does choose to pursue either of the proposals, we suggest Direct Intent and Indirect Intent should be defined in the Code and examples supporting the definitions should be included in a comment or guidance material.

### Anti Doping Danmark

Silje Rubæk, Legal Manager (Danmark)  
NADO - NADO

SUBMITTED

We generally support that the criteria for establishing lack of intent should be clearer and more defined, to ensure equal treatment of cases and athletes.

Nevertheless, we fear that it can pose challenges for athletes to live up to the mentioned criteria in the concept, which can create uneven situations and cases based on the financial resources of the athletes.

### USADA

Allison Wagner, Director of Athlete and International Relations (USA)  
NADO - NADO

SUBMITTED

Issue: The Concept paper for the Code sets forth two options for comment regarding the criteria an athlete must satisfy to reduce their sanction from four to two years. Those options are "(1) Athletes would be required to rule out through scientific/analytical evidence that the violation could have been directly or indirectly intentional; or (2) Athletes would be required to rule out direct intent only through scientific/analytical evidence and the period of ineligibility could subsequently and in exceptional cases be two to four years taking all circumstances/evidence into account."

Recommendation: It is difficult to understand many circumstances under which an athlete could establish the lack of intent (*mens rea*) (and even more so indirect intent) by means of scientific/analytical evidence. It seems this proof could come from hair samples or an extensive history of testing. It would be helpful to indicate what types of scientific/analytical evidence WADA is referring to with these two options. Of course, it is not up to the athlete to decide how frequently they are tested, so conditioning a reduction in sanction based on how much or little an ADO tested an athlete, is not helpful to many athletes. USADA recommends, consistent with CAS cases, that the athlete produce some concrete evidence of source, which in combination with other evidence enables the athlete to establish a lack of intent by a preponderance of the evidence to receive a reduction from four to two years. Absent *any* evidence of source, then option 2 appears to be more fit for purpose by taking into consideration all aspects of the case.

### Drug Free Sport New Zealand

Nick Paterson, Chief Executive (New Zealand)  
NADO - NADO

SUBMITTED



We agree with the issue being raised – it is difficult to establish a lack of intent where the source isn't established, both for specified and non-specified substances and all levels of athletes. Proving a negative is difficult for athletes.

We consider that flexibility needs to be maintained around the ability to prove a lack of intent without proving source, due to the difficulty with establishing source in legitimate situations (e.g., a potentially contaminated product has since been consumed, or is otherwise not available for testing), but proof needs to be more than conjecture and must satisfy the hearing body on the balance of probabilities.

**We don't support the WADA concept** which specifically requires athletes to produce scientific / analytical evidence to support a lack of intent, due to the following concerns:

- Gathering this type of evidence is expensive, highly complex, and inaccessible for many athletes; and
- In our experience, such evidence is still not conclusive due to the availability of contradictory explanations in the interpretation of the scientific / analytical evidence (e.g., a lack of research to support conclusions drawn from hair analysis; or concentration levels being relied upon to show small amounts of ingestion to support contamination, but conversely also being explained by micro-dosing).

We have had recent experience with a case where an athlete was trying to establish a lack of intent where they were not required to prove source. We would be happy to discuss our experiences.

## KADA

Shinhyeong jang, Legal / manager (Korea)  
NADO - NADO

SUBMITTED

### 1. (CODE Related)

Lack of intent without establishing origin

#### **A. Review of 'Intent' according to the 2021 regulatory system**

##### **o The 2021 regulations do not distinguish 'indirect intent (willful negligence)'**

- The current regulations on violation regarding 'doping' require 'intent' or 'fault,' and the burden of proof for this lies with KADA. However, in Articles 2.1 and 2.2, the principle of 'strict liability' is applied, and the so-called burden of proof is shifted. The basic sanctions are set at four years and two years, respectively, depending on intent or negligence, but there is no separate level of sanctions for 'indirect intent,' which can be regarded as willful negligence.

- Discussions on the revised regulations can be summarized into ? establishing a new sanction level section for 'indirect intent' (two to four years between direct intent and negligence), ? excluding all intent by using scientific (analytical) grounds in cases where the channel of proof cannot be proven (two years or less) or only direct intent (two to four years), and ? whether to exceptionally allow scientific (analytical) data as evidence to exclude intent.

#### **B. Diagnosis and problems regarding the direction of revision**

##### **o In practice, it is difficult to acknowledge willful negligence without establishing the origin.**

- The second opinion presented by WADA, like the opinion presented by the expert, excluding definitive intent with scientific or other evidence while the origin is not established, is theoretically possible, and imposing the sanction different levels of sanctions according to the evaluation of illegality is plausible in theory and in terms of the proportionality principle. (The first view is not consistent even theoretically).

- However, considering that claims of 'no intent' and 'reduction of sanctions due to negligence' are often made simultaneously, it is difficult to claim 'no intent' and 'reduction of sanctions due to negligence' at the same time **without establishing the origin, and it is difficult to distinguish between 'willful negligence' and 'significant fault' in practice, it will be more difficult to recognize only willful negligence without establishing the origin.**

#### **o Problems related to the judgment of 'willful negligence'**

- If a new sanction section for 'willful negligence' is established and set at two to four years, sanctions at different levels will have to be imposed depending on the degree, but **whether it is possible to evaluate the level of willful negligence by 'degree' by dividing it into significant fault, light fault, etc., as in the evaluation of fault is questionable.**

- If a new sanction section for 'willful negligence' is established, the sanction level sections for the current violation can be divided into **direct intent - willful negligence – significant fault – light fault - no fault or negligence**, but the criteria may be ambiguous as to whether willful negligence can be further subdivided according to the level of recognition.

**- The situation rather problematic in reality is that more reasonable standards for reducing negligence are required.**

#### **o Unclear definition of 'scientific, analytical evidence'**

- In the case of non-specific drugs under Article 2.1 or 2.2 of the Code, the athlete's 'intent' is considered (Article 2.1.1), and the burden of proof is on the athlete regarding 'no intent' (10.2.1.1). However, it is unclear which data and within which scope 'scientific/analytical data' specifically means, but since the athlete is exceptionally imposed with the burden of proof to exclude intentionality, the purpose seems to be requiring 'scientific and analytical data' as data that guarantee a fairly high level of objectivity and legitimacy. However, it is questionable how much of such evidence athletes can use as evidence in reality.

#### **o Information asymmetry problem between KADA and athletes and limitations in athletes' ability to collect evidence**

- Regarding information accessibility, the human and material resources available to review scientific and analytical data and provide opinions on doping in Korea are very limited. Therefore, whether these scientific or analytical data should be the only evidence that serves as a standard for distinguishing willful negligence from intent is questionable, and it is deemed that it will be virtually difficult to prove 'no intent' using the scientific and analytical data presented by athletes due to information asymmetry even if scientific and analytical data can be used as evidence to rule out intent exceptionally, athletes' access to scientific and analytical data is very low in reality and there is a difference in information accessibility compared with KADA.

### **C. Opinions on the amendment**

**o In cases where specific proof is provided when how athletes obtained drugs cannot be proven, and it is logical to exclude all direct and indirect intent as in the first discussion agenda of the concept, and as in the second discussion agenda, even when indirect intent is acknowledged, and sanctions are imposed according to the degree of use, it is difficult to apply in reality.**

**o Rational reasons for limiting the evidence to exclude intent to scientific and analytical data and the definition and scope of this data should be considered further.**

**o Regulations require the athlete the burden of proving 'no intent', but in reality, In reality, the Sanctions Committee is likely to determine whether the athlete had intent in all cases based on the scientific evidence presented by KADA, and in reality, there is a high dependence on KADA's data for verification due to information asymmetry, and as a result, this virtually shifts the athlete's burden of proof for 'no intent' to KADA. A problem may be raised that the provision for shifting the burden of proof (strict liability principle) may be weakened.**

UKAD agrees that case law has become increasingly inconsistent, particularly with regards to cases where a lack of intent is found without proving source. Further clarity in the Code on this issue is therefore welcomed.

Of the two proposals outlined within the concept paper, the first is preferred. However, in order to avoid inconsistent application of this proposal, some Code commentary will be required to indicate what *type* of scientific or analytical evidence, or in what types of scenarios such evidence might be capable discharging the burden for direct or indirect intent.

The concern with the second proposal is that it gives rise to ambiguity as to what constitutes an “exceptional case” and therefore will lead to further inconsistency. The term “exceptional” already appears elsewhere in the Code (in other contexts, e.g. “exceptional circumstances” in Article 10.3) and has caused some difficulty in practice. Absent a definition or clear guidance as to what is capable of constituting an exceptional case, there is room for inconsistency to develop amongst ADOs, panels and decisions. Facilitating a sanction ‘window’ of between two to four years is also likely to be problematic in its application and lead to further inconsistency. The availability of such a wide sanctioning range under the second proposal may also have the effect of leading to more cases being contested at a hearing (thus undermining the utility of provisions for case resolution without a hearing, e.g. Articles 10.8.1 and 10.8.2).

## CHINADA

SUBMITTED

Yao Cheng, Result Management (China)

NADO - NADO

### Comment 1: The proof for lack of intent is too strict

According to the comment to Code Article 10.2.1.1, while it is theoretically possible for an athlete or other person to establish that the ADRV was not intentional without showing how the prohibited substance entered one’s system, it is highly unlikely that in a doping case under Article 2.1 an athlete will be successful in proving that the athlete acted unintentionally without establishing the source of the prohibited substance. Furthermore, according to the definitions of the terms “No Fault or Negligence” and “No Significant Fault or Negligence”, “Except in the case of a protected person or recreational athlete, for any violation of Article 2.1, the athlete must also establish how the prohibited substance entered the athlete’s system.” This mandatory requirement sets a high burden of proof which is overly stringent for athletes who have unintentionally ingested the prohibited substances. Many times there exists a possibility of one or more types of contamination and it is challenging to establish the exact origin of it.

### Comment 2: The rules of Code are inconsistent with the case law in CAS.

In handling doping cases, it is virtually the hearing officer or arbitrator who independently forms a personal opinion through the free evaluation of evidence. For example, in cases such as CAS 2019/A/6313 (Jarrion Lawson v. International Association of Athletics Federations), CAS 2019/A/6443 (Canadian Centre for Ethics in Sport v. Dominika Jamnicky), and the case of Australian swimmer Shayna Jack (CAS A1/2020, CAS 2020/A/7579 and CAS 2020/A/7580), CAS arbitration panels all ruled that, in the absence of exact evidence from the athletes of how the prohibited substances entered their bodies, the athletes had not committed ADRVs intentionally, the athletes even bore No Fault or Negligence, and a concept of “the narrowest of corridors” was introduced. In response to the CAS rulings stated above, we suggest that Article 10.2.1.1 and its comment, as well as the definitions of the terms “No Fault or Negligence” and “No Significant Fault or Negligence” be amended.

### Comment 3: The second proposal of this concept is more reasonable

Direct and indirect intent, as proposed by the Code Drafting Team, are originally concepts in criminal law. However, careful consideration is required regarding whether they can be directly invoked in the anti-doping rules. If such invoking is made, achieving a harmonized understanding and practice among ADOs will become another complex

issue. Comparatively speaking, the second proposal, which rules out direct intent on the part of the athlete, may sound more reasonable in practice.

#### Comment 4: Who is responsible for collecting the evidence?

Athletes often face significant challenges in providing scientific and analytical evidence. On one hand, this significantly increases the cost for athletes to gather evidence; on the other hand, it raises concerns about whether ADOs and analytical organizations, particularly WADA-accredited laboratories, can assist athletes in gathering the evidence. How can athletes search for and provide analytical evidence if WADA-accredited laboratories are unable to support them in this regard?

#### Japan Anti Doping Agency

YUICHI NONOMURA, Result Management (??)  
NADO - NADO

SUBMITTED

Keeping a consistency on the condition of establishing a lack of intent is essential. With regard to Proposal #1, unless the definition and scope of 'INDIRECTLY' is clarified, the issue of inconsistency in the Case is unlikely to be resolved. It is also a concern that the extent of proving scientific/analytical evidence, which can be varied depending on the financial condition/sponsorship (economical) condition of athletes. Those athletes who have advantages for employing a lawyer or asking additional analytics to the private laboratories could establish scientific/analytical evidence. It is important to consider the economic gaps, which may affect a different sanction period. Regarding on the matter of financial disadvantage, the right of athletes to affordable justice (stated Athletes' Rights Act Article 18) should be considered.

We support Proposal #2. It would then be more constructive to consider mechanisms for athletes to obtain analytical and advisory assistance from experts in order to obtain direct scientific/analytical evidence, and the evidence that ADOs can provide, in order to ensure the principle of strict liability and a clean sport environment. For example, in the case of substances with a short half-life in the body, the sample could be collected within a short period of time so that the timing and amount of the substance entering into the athlete's body can be verified. For this Concept #1, we hope to maintain the consistency for ensuring clean sport and protecting clean athletes and consider the 'global' context.

#### Dopingautoriteit

Robert Ficker, Compliance Officer (Netherlands)  
NADO - NADO

SUBMITTED

#### 6.2. Relevant provision:

Article 10.2.1 reads as follows:

*The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:*

*10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*

*10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and the Anti-Doping Organization can establish that the anti-doping rule violation was intentional.*

#### 6.3. Issue:

WADA's Concept Paper for the Code sets forth two proposals regarding the criteria an athlete must satisfy to reduce their sanction from four to two years.

*1. Athletes would be required to rule out through scientific/analytical evidence that the violation could have been directly or indirectly intentional; or*

2. Athletes would be required to rule out direct intent only through scientific/analytical evidence and the period of ineligibility could subsequently and in exceptional cases be two to four years taking all circumstances/evidence into account.

#### 6.4. Recommendation:

6.4.1. Doping Authority prefers athletes being required to establish how the prohibited substance(s) entered the athlete's system as a criterion for athletes proving that they their violation was not directly or indirectly intentional. The alternative CAS approach to intent ("the narrowest of corridors"), when an athlete is unable to prove the source of the AAF, leads to a differences in interpretation and application, creating divergent decisions and outcomes, which is contrary to the fundamental objective of the Code to establish harmonisation. Doping Authority therefore recommends that it is expressly mentioned in the Code that the athlete has to establish the source of the AAF in order to rebut the presumption of intent.

6.4.2. If, however, this requirement of establishing the source of the AAF will not be mentioned in the next Code then it is of critical importance to introduce in the Code a single, clear and unambiguous pathway with respect to rebutting the presumption of intent without establishing the origin of the AAF.

6.4.3. Regarding the current two proposals submitted as part of concept #1, Doping Authority Netherlands has difficulties understanding the circumstances under which an athlete could establish the lack of intent (either direct or indirect) by means of scientific/analytical evidence. We understand the two concept #1 proposals as being related to scientific/analytic evidence in relation in establishing the source/origin of the AAF (i.e. how the substance(s) entered the athlete's body). If this is not what the Code Drafting Team intends, we do not understand what scientific/analytical evidence is alluded to.

6.4.4. This clear, unambiguous provision is crucial because in cases relating to national level athletes there is no appeal option to CAS (with the exception of WADAs right to appeal). So, if the national appeal panel gets it wrong there is no way for the NADO to remedy this.

#### Anti-doping Bureau of Latvia

Mārtiņš Dimants, Director (Latvia)

NADO - NADO

SUBMITTED

LAT-NADO acknowledges the necessity for WADA to clarify the definition and criteria for establishing intent, emphasizing the importance of incorporating relevant precedents from leading CAS cases. However, LAT-NADO raises a specific concern based on the Shayna Jack case, where the athlete lacked concrete evidence of the origin of the detected Prohibited Substance. Despite CAS recognizing the significance of science in the case, it concluded, "In this case, science is important but cannot be decisive given the absence of an identified origin of the Prohibited Substance detected in the Athlete's system." This implies that CAS has instances where scientific evidence may not play a decisive role. LAT-NADO seeks clarification on whether this concept emerged from cases like Shayna Jack's or other factors, and requests information on the leading CAS cases considered by WADA in shaping this concept.

The second concern centers around fairness and financial resources. LAT-NADO highlights that athletes, already burdened with the responsibility to prove innocence once an Adverse Analytical Finding (AAF) is identified. Numerous athletes invest their own resources into sports without significant financial returns. LAT-NADO asserts that if NADOs do not provide guidance, the added complexity of relying solely on scientific evidence for proving innocence exacerbates the challenges for athletes which are mostly without legal expertise. LAT-NADO suggests that sanctions should be proportionate to the violation committed, cautioning against a system so stringent that it results in unproportionate sanctions because the requirements for proving are too high.

In essence, LAT-NADO urges caution in establishing criteria for identifying *No Significant Fault* or *No Fault* situations, emphasizing the need for a balanced approach that considers the practical challenges faced by athletes in proving innocence, especially in cases where financial resources are limited.

## Swiss Sport Integrity

Ernst König, CEO (Switzerland)  
NADO - NADO

SUBMITTED

Issue: "Lack of Intent without Establishing Origin - There are two options for comment regarding the criteria an athlete must satisfy to reduce their sanction from four to two years:

- 1) Athletes would be required to rule out through scientific/analytical evidence that the violation could have been directly or indirectly intentional; or
- 2) Athletes would be required to rule out direct intent only through scientific/analytical evidence and the period of ineligibility could subsequently and in exceptional cases be two to four years taking all circumstances/evidence into account."

In principles, Swiss Sport Integrity agrees with option 2.

Although, without further information, it is difficult to understand many circumstances under which an athlete could establish the lack of intent (and even more so indirect intent) by means of scientific/analytical evidence. It seems this proof could come from hair samples, the athletes biological passport or an extensive history of testing. It would be helpful to indicate what types of scientific/analytical evidence WADA is referring to with these two options. Of course, it is not up to the athlete to decide how frequently they are tested, so conditioning a reduction in sanction based on how much or little an ADO tested an athlete, is not helpful to many athletes. Therefore, Swiss Sport Integrity recommends, consistent with CAS cases, that the athlete produce some concrete evidence of source, which in combination with other evidence enables the athlete to establish a lack of intent by a preponderance of the evidence to receive a reduction from four to two years. Absent any evidence of source, then option 2 appears to be more fit for purpose by taking into consideration all aspects of the case.

Option 1 seems to be less burdensome on the athlete but would not help for sanction consistency as there could be many different interpretations of scientific/analytical evidence at various instances, even at various CAS panels.

## NADA India

NADA India, NADO (India)  
NADO - NADO

SUBMITTED

-Stakeholders/WADA should favour Proposal 1 along with certain components of Proposal 2, requiring athletes to prove lack of intent through scientific evidence.

-However, implementation must leverage advanced analytical techniques like isotope ratio mass spectrometry and specific scientific methods may also be mapped with the Prohibited List to better inform the options to athletes.

-To enhance fairness, establish a centralized, well-funded body for scientific review, ensuring consistency.

-Additionally, invest in research to identify novel means of inadvertent substance ingestion, aiding athletes in building robust defences.

## Freelance journalist

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

It should be mandatory to prove how the banned substance entered the athlete's body. Whether it be through scientific methods or otherwise, the basic minimum should be how it entered the body. Vague assertions like "it might have come from the swimming pool" or "I might have mixed up medicines in the fridge" etc should not come in as valid arguments to explain the presence of a banned substance.

## Sports Tribunal New Zealand

Helen Gould, Registrar (New Zealand)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

The wording of the two options is unclear. Article 10.2.3 currently makes it clear that the term 'intentional' includes both direct and indirect intent so we are uncertain as to why they are separated out in these proposed amendments.

While it is currently not necessary for an athlete to prove source to prove lack of intention, the footnote to 10.2.1.1. says: 'it is highly unlikely' that an athlete will succeed without proving source. Making it easier to prove lack of intention in situations where the source cannot be identified is desirable.

However, requiring scientific evidence will put an extra onus on athletes which will result in additional cost.

Could the amendment encourage the provision of scientific/analytical evidence without making it a requirement? Something along the lines of:

*"Where athletes are unable to establish the source of a prohibited substance and want to establish that ingestion was unintentional, the provision of scientific/analytical evidence will assist the decision-making body to reach such a conclusion. "*

### International Testing Agency

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

SUBMITTED

Support is given to option 1

### Charles University, Faculty of Law

Jan Exner, Assistant Professor (Czech Republic)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

I wish to provide feedback on the issues raised by the drafting team and related questions stemming from my research into sanctions for doping and their proportionality. The feedback concerns the definition of intent, burden and standard of proof and the sanctions itself. Based on my research, I welcome the proposal that athletes could rule out intent through scientific or analytical evidence, and not only through proving the origin of the prohibited substance. I also welcome mitigating sanctions for intentional doping to the range of two to four years while considering all circumstances. Nevertheless, I recommend going even further. My research demonstrates that the standard four-year period of ineligibility for the first intentional presence, use or attempted use or possession of a prohibited substance or method under Article 10.2.1 of the WADC 2021 is essentially disproportionate. Therefore, I recommend reconsidering the sanction and imposing a two-year ban for the first intentional doping.

#### **The four-year period of ineligibility for the first intentional presence, use or attempted use or possession of a prohibited substance or method (Article 10.2.1 of the WADC 2021)**

While the sanctions in the WADC 2021 are more proportionate than ever before, my research demonstrates that the four-year ineligibility remains a disproportionate restriction on athletes' rights, particularly those stemming from the European Union law. The EU competition law, the free movement of workers, the freedom of establishment, the free movement of services, EU citizenship and EU fundamental rights apply to ineligibility, which restricts such rights. Discussing the justification of the four-year ban, it follows legitimate general objectives of the fight against doping and specific objectives of punishing severely intentional dopers and deterring potential cheaters. Moreover, the sanction is inherent in the fight against doping and is suitable to punish intentional dopers more severely since it renders them ineligible for twice as long compared to the previous two-year ban.

On the other hand, my research demonstrates that the suitability of the four-year ineligibility to deter athletes from doping is at least doubtful. The statistical analysis of the WADA anti-doping testing figures reports showed that increasing the sanction from two to four years in 2015 did not result in fewer anti-doping rule violations. As such, it contradicts the goal of the sanction to deter athletes from doping. One of the reasons may be insufficient anti-doping education. My research showed that only 50 % of elite athletes are aware of the four-year ban being the punishment for the first intentional doping. If the athletes do not know the sanctions, it can hardly deter them from

doping. Therefore, I recommend streamlining anti-doping education as an important prevention and deterrence strategy. In particular, the combination of awareness-raising and disseminating information with values-based education contributes to the prevention of intentional doping. Moreover, anti-doping education raises awareness about athletes' and other persons' rights and responsibilities, including robust rules and sanctions, enabling their deterrence effect.

Moreover, my research demonstrates that the four-year ban is disproportionate since it goes beyond what is necessary to punish intentional cheaters more severely and deter athletes from doping. Varying slightly based on the sport concerned, the average length of an athlete's professional career is eight years. The empirical research shows that the four-year ban is in most cases career-ending, effectively equals a lifetime ban and takes athletes' second chance away. Moreover, the research demonstrates that athletes themselves consider it disproportionate. On top of that, the four-year ban is not adjustable and does not allow hearing panels to conduct a case-by-case assessment and individualize sanctions according to all objective and subjective elements of a case. All the first intentional anti-doping rule violations without aggravating circumstances lead to the same four-year period of ineligibility, which contradicts the principle of equal treatment amongst athletes. Therefore, I recommend reviewing the WADC 2021 and imposing two years of ineligibility for the first intentional presence, use, or attempted use or possession of a prohibited substance or method. Alternatively, but not ideally, I support the idea of the drafting team imposing the ineligibility between two and four years depending on all circumstances and evidence.

For details of the research, see *Exner, J. (2018): Anti-Doping and Athletes' Rights under EU Law: Four-Year Period of Ineligibility as Disproportionate Sanction? International Sports Law Journal, pp. 128-138; Exner, J. (2023): Fight Against Doping, Good Governance, and Education: What are the Roles and Responsibilities of the Czech Olympic Committee? Sports Law, Policy and Diplomacy Journal, pp. 45-104.*

### **The burden for protected persons and recreational athletes to establish the lack of intent (Article 10.2.1.1 of the WADC 2021)**

Second, I recommend shifting the burden from protected persons and recreational athletes to anti-doping organisations (ADO) to establish intent in cases involving non-specified substances. The WADC 2021 introduced the categories of protected persons and recreational athletes and adjusted their sanctions. My research demonstrates that it was essentially a step forward compared to the WADC 2015 in terms of both suitability and proportionality. The WADC 2021 correctly reflects their lack of educational opportunities, experience or resources compared to elite athletes. As such, the WADC 2021 rightly mitigates sanctions for violations committed by protected persons or recreational athletes with no significant fault or negligence. Moreover, the WADC 2021 correctly relieves protected persons and recreational athletes of the duty to establish the source of the prohibited substance to claim no or no significant fault or negligence.

However, my research demonstrates that the exception from the duty to establish the source of the prohibited substance loses much of its sense in cases involving non-specified substances when protected persons or recreational athletes still factually bear the obligation to establish the lack of intent. The comment to Article 10.2.1.1 of the WADC 2021 provides that it is theoretically possible to prove the lack of intent without showing how the prohibited substance entered one's system. However, it continues that it is highly unlikely that an athlete will be successful in proving that the athlete acted unintentionally without establishing the source of the prohibited substance. As such, the comment suggests that hearing panels should interpret the provision as meaning that it is highly unlikely that protected persons or recreational athletes prove the lack of intent if they do not establish the source of the prohibited non-specified substance. If protected persons or recreational athletes did not substantiate the source of the substance, it would be highly unlikely that hearing panels would consider their violation not intentional. If the violation was intentional, the fault-related elimination or reduction of the sanction would be off the table.

Based on my research, I regret that the drafting team of the WADC 2021 did not pursue the initial idea to shift the burden of proof from minors to ADOs to establish intent in cases involving non-specified substances, which would solve the abovementioned controversy. According to the first draft of the WADC 2021, an ADO had to establish that the anti-doping rule violation was intentional for a minor to receive a four-year ban. However, the drafting team received negative feedback on the proposal and dropped the idea. Nevertheless, my research shows that the burden for minors, but also for other protected persons to prove the lack of intent, is disproportionate. Protected persons should not bear such a burden since they may not have enough education, experience, mental capacity, or resources compared to ADOs. Similar logic applies to recreational athletes, especially regarding lack of education, experience, or resources. Therefore, I recommend that the WADC 2027 shifts the burden from protected persons



and recreational athletes to ADOs to establish intent in cases involving non-specified substances.

For details of the research, see *Exner, J. (2022): Intent, Substances of Abuse, Aggravating Circumstances, Protected Persons and Recreational Athletes: Does the World Anti-Doping Code 2021 Provide Proportionate Sanctions? International Sports Law Journal, pp. 77-83.*

### **The difference between intentional doping and knowing use of prohibited substances (Article 10.2.3 of the WADC 2021)**

On top of that, I recommend drawing a clear line between sanctions for intentional doping and knowing use of prohibited substances. The WADC 2021 removed the phrase “athletes who cheat” from the definition of the term “intentional” to sanction the presence, use or attempted use or possession of prohibited substances and methods. Nevertheless, the reasons for this modification and its consequences remain unclear. My research demonstrates that there is a difference between athletes intentionally ingesting prohibited substances to cheat, and athletes knowingly using such substances without the intention to cheat. Therefore, imposing the same sanction on both categories of athletes would contradict equal treatment among athletes.

For details of the research, see *Exner, J. (2022): Intent, Substances of Abuse, Aggravating Circumstances, Protected Persons and Recreational Athletes: Does the World Anti-Doping Code 2021 Provide Proportionate Sanctions? International Sports Law Journal, pp. 65-67.*

### **Aggravating circumstances (Article 10.4 of the WADC 2021)**

Finally, I recommend reconsidering sanctions for anti-doping rule violations committed under aggravating circumstances. My research demonstrates that hearing panels bear a heavy burden to ensure a proportionate punishment stemming from the concept of aggravating circumstances and its combination with the disqualification of competitive results. The application of aggravating circumstances may result in a period of ineligibility of even six years for the first anti-doping rule violation, which borders on proportionality. Moreover, the duty to disqualify all competitive results “unless fairness requires otherwise” highlights the disproportionate nature of the punishment. Therefore, hearing panels should carefully consider whether the combination of the increased sanction and the disqualification of competitive results is a proportionate consequence. If not, hearing panels should not choose to impose the maximum ineligibility and use the fairness exception to disqualify only certain results. On the contrary, they should rather disqualify all competitive results and impose a shorter ineligibility. Such a punishment would be more proportionate, while still protecting the level playing field.

For details of the research, see *Exner, J. (2022): Intent, Substances of Abuse, Aggravating Circumstances, Protected Persons and Recreational Athletes: Does the World Anti-Doping Code 2021 Provide Proportionate Sanctions? International Sports Law Journal, pp. 72-77.*

## **Concept #2 – Results Management of Substances of Abuse (38)**

### **Team USA Athletes' Commission**

Meryl Fishler, Manger (United States)

Sport - Athlete Representative (State the name of the athlete body in Organization name)

SUBMITTED

1. We don't support the removal of formal reduction but agree that the treatment program should be completed. We believe that the treatment program should be kept in place regardless of addiction professional's requirements because it allows for the system to grant leniency to athletes who used a substance of abuse without intent to enhance performance.

2. We do not support this proposal. We believe that multiple substance abuse violations could possibly indicate (as determined by a professional) that requiring more treatment for the substance abuse issue would be the correct way to deal with the matter, not the path suggested in the proposal.

3. We do not support this proposal because what is suggested seems overly complicated and very hard to determine.

4. Does this mean cocoa leaves and teas are treated the same way as marijuana, cocaine, etc.?

### **Union Cycliste Internationale**

SUBMITTED

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

Although it is not part of WADA's core mission, preventive/education/therapeutic action regarding substance of abuse should be encouraged.

In that regard, the Substance of abuse treatment program should be maintained for a first violation. However, it is obvious that the treatment program should be defined further and not be too restrictive.

Is it adequate/realistic to link the temporal aspect of Article 10.2.3 to an adequate fixed period of time between the ingestion and the competition (to be defined taking into account the potential doping effect) considering the various type of substance of abuse, the different excretion time, intra-individual variations and sport nature/discipline?

It could be indeed good to clarify that it can apply to other uses of those substances (e.g. coca tea, leaves) in a comment to the provision

### **World Rugby**

SUBMITTED

David Ho, Senior Manager Anti-Doping Operations (Ireland)  
Sport - IF – Summer Olympic

We would support the removal of the link between the treatment programme and period of ineligibility. The wide scope of the treatment programme format renders this almost meaningless (although we remain of the opinion that an assessment should always be made by the ADO following the first offence, as to the need for the athlete to be supported with treatment (even if this responsibility is passed on to the athlete's NF)).

However, we consider that implementing a fixed starting period of ineligibility of 3 months for a first substance of abuse offence would need some justification, given that the current regime effectively allows for a one month sanction where very basic conditions are met (accepting that it's often difficult for most athletes to do this in time). Unless the perceived risk of substance of abuse use has changed this would seem difficult to justify and may need further consultation about the entire sanctioning regime for this category.

With regards to the possible change in the link between 10.2.4 and the definition of in-competition, we're interested in this but we're not sure it is entirely clear in terms of what we're being asked to consider? Could this be reworded/clarified for the next review stage, or some examples provided?

### **National Olympic Committee and Sports Confederation of Denmark**

SUBMITTED

Mikkel Bendix Bergmann, Legal Advisor (Denmark)  
Sport - National Olympic Committee

#### **Concept #2 - Results Management of Substance of Abuse**

The Danish NOC acknowledges the necessity for clarification in addressing substances of abuse.

In Denmark, we have encountered cases involving cannabis, where our experience indicates that chronic users often surpass the limit value for cannabis established in the Code. These individuals may register significantly higher concentrations, making it challenging to conclusively categorize the intake as out of competition. Consequently, these athletes are ineligible for a 3-month sanction, instead facing a 2-year penalty. Furthermore, they are deprived of the option for a reduced sanction through substance abuse treatment, despite potentially being athletes who would benefit most from such programs.

While we support the retention of the option for a reduced sanction through a treatment program, we hesitate to

endorse the specification that enrollment alone fulfills the condition. We maintain the position that the program should be completed.

We advocate for increased flexibility in sanctions, allowing for the possibility of a 3-month sanction for athletes with a notably high concentration of cannabis. This flexibility could be achieved by eliminating strict guidelines and, instead, basing the determination of "in/out of competition" on the athletes' statements, testimonies, and case narratives.

Alternatively, we propose the establishment of a distinct rule for cannabis, removing it from the substances of abuse category and instituting a flat 3-month sanction for cannabis, independent of the existing guidelines.

### **Botswana Football Association**

Boago Diphupu, Mr (Botswana)  
Sport - Other

SUBMITTED

We need to see young boy and girls being educated about substances abuse at sport and how it can destroy their lives.

### **NZ Rugby**

Rebecca Giordano, Senior Legal Counsel - Regulations & Compliance (New Zealand)  
Sport - Other

SUBMITTED

We agree with all four of the proposals presented by the Code Drafting Team. In relation to the first proposal, we support the reduction of the period of ineligibility related to the treatment program being maintained (in whole). However, we agree, it would make sense to clarify that the condition could be met by an enrolment on the approved treatment program (as opposed to completing the same), with the possibility of reinstating the reduced period if the treatment program was not duly completed. This is the approach we have seen taken by tribunals (taking a common sense approach) so it makes sense (in our view) to expressly clarify it.

### **UEFA**

Rebecca Lee, Anti-Doping Team Leader (Switzerland)  
Sport - Other

SUBMITTED

UEFA partially supports the development of this concept

UEFA does not see any particular challenge with the current regulations on Substances of Abuse. However, UEFA sees possible inequality of treatment related to the duration of a treatment program. Some of them last days, other months and other years. It is difficult to demand the completion of a treatment program if this one is to be completed over years. As such, we would be in favour of amending the current wording asking athletes to prove the "involvement" in a treatment program to reduce the sanction from 3 to 1 month and to provide proof of completion once the treatment program is completed. In the absence of such proof, the additional 2 months would be reinstated.

To further ensure that the athlete does not continue to take substance of abuse, the inclusion of substance of abuse in the multiple violation in accordance with Art 10.9 would be something to explore. Otherwise, we could consider adding a period of ineligibility of up to 2 years in case of recidivism on the basis of aggravating circumstances (Art 10.4)

UEFA however disagrees to the third option of linking the temporal aspect of 10.2.4 to an adequate fixed period between ingestion and actual competition as every athletes are physiologically different. For instance, multiple intake of Cannabis for a regular consumer can last for various weeks in the system while for a one time consumer it will be excreted after a few days. There are simply too many variables to take into account, which would not be of help for ADOs.

In respect to the fourth proposal, UEFA has no particular comment.

## International Tennis Integrity Agency

Nicole Sapstead, Senior Director, Anti-Doping (United Kingdom)  
Sport - Other

SUBMITTED

The administration of the RM process relating to a violation involving a substance of abuse is more burdensome than necessary.

The ITIA do not have a strong view on substances of abuse sanctions as 1 or 3 months is still quite low and the first case that the ITIA had involving a substance of abuse resulted in the individual not completing the programme so they took the 3 months ultimately. The second case involved an athlete with a disability who used cannabis for pain relief. The only way they could reduce their sanction was to go to a treatment programme although they were not a habitual user.

The ITIA would not object to the removal of treatment programme and simply 3 months ineligibility (if Out-of-competition and not related to sports performance) for a first offence or a similar fixed sanction for all such substances. The sanction for a second offence could be increased with then the option of reducing the sanction applicable for a second offence for a substance of abuse finding to 3 months based on a treatment programme.

3 months could serve as a deterrent rather than one month and the attendance at a treatment programme (which vary from country to country etc).

Where an athlete has taken a substance of abuse for the relief of pain (associated with a disability/long term medical condition etc) the ITIA wonders whether there should be a different approach – ie one that does not carry such a lengthy sanction or requires attendance at a treatment facility. Is there a role the TUEC could play here provided the player can evidence that they suffer from a medical condition/disability that is alleviated through e.g cannabis use and such use if supported (although in many countries cannot be legitimately prescribed) by a medic?

## Sport NZ

Jane Mountfort, Principal Policy and Legal Advisor (New Zealand)  
Public Authorities - Government

SUBMITTED

This submission is made on behalf of Sport New Zealand, which is the Crown agency responsible for advising the New Zealand government on anti-doping policy and ensuring New Zealand's compliance with the International Convention against Doping in Sport 2005.

Sport NZ supports recognition of the benefit of treatment by the sanctioning regime for substances of abuse. We therefore support a sanction of 3 months, reduced to 1 month subject to completion of a treatment programme (increasing to 3 months on non-completion) and that this be available on the first and subsequent offences.

Sport NZ opposes the removal of the exclusion from the multiple violation regime under Article 10.2.4.1.

Sport NZ reserves its comments on the proposal to link the temporal aspect of Article 10.2.4 to an adequate fixed period between ingestion and the actual competition in question until further information on its potential operation is provided. We consider that it would create significant complexity and uncertainty to have different periods for different substances (and potentially different dosages).

We do not have clarity on what "other uses" of those substances refers to. We require additional detail to respond to this proposal.

## Council of Europe

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

SUBMITTED

## (basically) supported

There is a need for clarification in dealing with substances of abuse. There is agreement that the scope of application of the reduced range of sanctions - up to a one-month ban - should be more clearly emphasised with regard to the substances to be classified as substances of abuse.

But there are differing opinions regarding the period of ineligibility and the scope of application in the event of multiple offences.

However, it is important to note that the "completion" feature of the Substance of Abuse treatment programme cannot be maintained. It is obvious that the programme cannot realistically be completed within the lockdown period. These requirements for the reduction should be removed.

See also comment #7 to the ISL regarding substances of abuse.

### Organizacion Nacional Antidopaje de Uruguay

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

SUBMITTED

No comments. Approved 1st stage. Remember that recovery periods for drugs of abuse have no protocols. They are under strict medical supervision

### Agence française de lutte contre le dopage

Adeline Molina, General Secretary Deputy (France)  
NADO - NADO

SUBMITTED

- La réduction supplémentaire de la période de suspension (à 1 mois) pourrait être maintenue, bien qu'à défaut de lignes directrices, sa mise en œuvre n'est pas toujours évidente.

Il pourrait être précisé dans l'article ou dans un commentaire qu'il suffit pour le sportif d'être engagé sérieusement dans un programme de traitement contre les substances d'abus pour ne pas laisser entendre que le traitement doit être terminé pour bénéficier de cette réduction. En effet, il n'est pas réaliste d'imaginer qu'un programme de traitement peut être achevé dans le mois suivant la décision, et attendre l'achèvement du traitement serait dommageable lorsqu'une suspension provisoire a été prononcée lors de l'ouverture de la procédure.

En revanche, permettre de rétablir la période réduite si le traitement n'a pas été complété n'est pas approprié. Cela supposerait d'assurer le suivi du programme de traitement et de mettre en œuvre une nouvelle procédure de rétablissement de la sanction, ce qui serait contraire à l'objectif de simplification poursuivi par ce régime.

Par ailleurs, il serait incohérent de ne permettre l'accès à ce régime qu'aux seuls sportifs qui ont commis une seconde infraction impliquant une substance d'abus. En effet, un sportif peut nécessiter un tel traitement sans avoir précédemment commis une première violation, et il serait injuste et peu compris que les seuls récidivistes puissent bénéficier de ce régime.

- A l'inverse, il est regrettable que le régime des substances d'abus échappe au régime des violations multiples prévu à l'article 10.9 (v. article 10.9.2). Il n'y a pas de raisons de ne pas appliquer le régime de la récidive, sauf à admettre que des mêmes sportifs peuvent avoir périodiquement des RAA sanctionnés de seulement 3 mois.

- Il ne serait pas approprié de fixer une période entre l'ingestion et la compétition en lieu et place du concept simple et efficace d'une prise en ou hors compétition. Cela aboutirait à une complexification scientifique excessive des cas. De plus, la notion de prise en ou hors compétition a le mérite de la clarté et de la pédagogie: elle permet d'éduquer les sportifs à ne pas prendre une substance interdite le jour de la compétition.

En revanche, il serait nécessaire de fournir des lignes directrices plus robustes pour apprécier les concentrations urinaires, notamment concernant le cannabis (le niveau de 180 ng/mL actuel n'est pas satisfaisant au regard de multiples facteurs influençant l'excrétion urinaire).

- Pourquoi ne pas préciser que le régime des substances d'abus peut s'appliquer à des utilisations non festives (thé de coca ou feuilles de coca). Mais il ne semble pas nécessaire de modifier l'article du code (le commentaire ou des lignes directrices pourraient l'expliciter).

1. The further reduction of the period of ineligibility related to a treatment program be either removed (e.g., with a fixed sanction of 3 months) or limited to a second violation involving a substance of abuse. If the reduction of the period of ineligibility related to the treatment program is maintained (in whole or in part), it would make sense to clarify that the condition could be met by an enrolment on the approved treatment program (as opposed to completing the same), with the possibility of reinstating the reduced period if the treatment program was not duly completed

Comment NADA: Agree

- treatment and rehabilitation programs are neither suitable nor applicable as they tend to be way longer than the period of ineligibility, therefore the reduction should be removed

2. Code Article 10.2.4.1 violations are currently excluded from the multiple violation regime described in Code Article 10.9.1 (per Code Article 10.9.2). The Code Drafting Team wishes to explore the possibility of removing this exclusion, at least where two violations subject to article 10.2.4.1 are committed.

Comment NADA: Agree

- Past cases have shown that explicitly that Athletes who used substances of abuse tend not to stop using and are delivering reoccurring cases. The message sent with the exclusion of the multiple violation system sends a wrong sign to clean athletes ("intentionally used substances of abuse are not that bad as e.g. a diuretic used for medical reasons but lacked a formal aspect such as TUE")

3. To link the temporal aspect of Article 10.2.4 not to the Code definition of "In-Competition" but rather to an adequate fixed period between ingestion and the actual competition in question (to be defined taking into account the potential doping effect).

Comment NADA: Agree

- The temporal aspect is the main troubleshoot in the administration of substances of abuse cases
- Further explanation need to be at hand, how exactly an athlete can establish that the use was unrelated to sport. Is a simple assertion by the athlete enough or did he/she bring further evidence?
- After the Athlete's Statement the burden of proof shifts back to RMA to rebut the assertion, even with extremely high values found in the sample. It is nearly impossible to rebut those statements. A further temporal aspect could help in these cases (e.g. did you smoke at 23.59 or 0:00).

4. To clarify that this specific sanctioning regime can apply to other uses of those substances, e.g., coca tea or coca leaves. Comment NADA: Partly agree

- Not only restricted to "other uses of the substance", also to metabolites found in connection with a Substance of Abuse such as e.g. MDA as metabolite in connection with the simultaneous detection of MDMA. This was already confirmed by WADA in an earlier case.
- Further clear substances of abuse should be added such as Crystal Meth, which is clearly highly addictive and might rather lead to the athlete's destruction rather than enhancement of sport performance

ADSE considers that the possibility of a reduction of the period of ineligibility if a treatment program is completed should be removed. In practice, this exception is difficult to apply and to follow-up. One consequence is that a penalized athlete may be able to exploit the benefits of a reduced sanction, before entering a treatment program

(which is not satisfactory). If treatment programs shall remain as a possible ground for reduction, ADSE suggests that the scope and extent of the intended treatment programs is further clarified and that it is clarified when a treatment program is considered to be completed.

In ADSE's view, the current regulation, excluding violations set out in Article 10.2.4.1 of the Code, is the most appropriate violation regime.

ADSE supports the proposal to clarify that the specific sanctioning regime can apply to other uses of those substances, e.g., coca tea or coca leaves.

Other comments on this Code Article. Chronical THC and cocaine users or cocaine (verified via for example medical records) cannot benefit from the reduction in Article 10.2.4.1, since their levels of THC/Cocaine in the sample are too high. This means that they cannot establish that the use was Out-of-Competition. ADSE proposes that this issue is addressed and look at if an exemption could be relevant.

#### **NADA Austria**

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

NADA Austria welcomes the **Concepts #1** and **#2** of the Code Drafting Team according to the WADC 2027.

#### **Sport Integrity Australia**

Chris Butler, Director, Anti-Doping Policy and International Engagement (Australia)  
NADO - NADO

SUBMITTED

In general, we are of the view that within the Australian context the current regime is working and that the changes proposed would not improve the operation of the current system.

The history of amendments to the Code in relation to substances prohibited in Competition has been aimed at simplifying and clarifying the rules to reduce regulation and target drug cheats. For example, the streamlining of the definition of 'in Competition' and the introduction of decision limits for cannabis. The Substance of Abuse (SOA) regime was introduced in 2021 to clearly distinguish between the use of substances to gain a performance enhancing effect and 'recreational' drug use. It represents a concentrated effort to lessen the regulatory burden on ADOs; allowing ADOs to focus on performance enhancing substances while dealing effectively with Athlete welfare arising from recreational drug use through an alternative SOA regime.

We are concerned that while the proposals put forward under this Code Concept #2 are aimed at harmonising this SOA regime they may instead complicate this approach and increase the impost on ADOs.

As such **we do not support** the proposals put forward under this Code Concept #2. Instead, we encourage the Drafting Team to retain the current regime with some suggested improvements to ensure the rules are clear and are consistently and practically applied.

We have included our positions and reasons in relation to each proposal as follows:

**The further reduction of the period of ineligibility related to a treatment program be either removed (e.g. with a fixed sanction of 3 months) or limited to a second violation involving a substance of abuse.**

We **do not agree** the period of Ineligibility related to a treatment program should be a fixed sanction of 3 months or alternatively that the further reduction to a one-month sanction be limited to a second violation involving a SOA.

We have found the one-month reduction related to a treatment program to be beneficial to Athletes and sports and would support maintaining this option. The main purpose for introducing this system is to deal with the 'recreational use' of Prohibited Substances by Athletes and the rule allowing the reduction of the period of ineligibility from 3

months to one month is a worthwhile part of this process.

An Athlete should be encouraged and rewarded (for the first violation) for taking steps to address the use of a SOA for a purpose not related to sporting performance. If a medical practitioner recommends a treatment program (to treat addiction or dependency) then enrolling in the program satisfies the requirements for reducing the period to one month, noting that treatment for a longer period of time may be prescribed (see further information on this point in the answer below).

We do acknowledge that completing results management within the one-month timeframe (where a mandatory provisional suspension is imposed) can be difficult. However, from our perspective, we have been able to achieve it in all cases where the one-month period of Ineligibility was found to have applied.

**If the reduction of the period of ineligibility related to the treatment program is maintained (in whole or in part), it would make sense to clarify that the condition could be met by an enrolment on the approved treatment program (as opposed to completing the same), with the possibility of reinstating the reduced period if the treatment program was not duly completed.**

We **agree in part** to this proposal, noting the difficulty in monitoring the completion of a program. We **agree** that the condition to reduce the period of Ineligibility should be met by enrolment in a treatment program (rather than completion of the program) and that this should be made clear. However, we **do not agree** the reduced period should be reinstated if the treatment program is not duly completed.

- It is not the role of the ADO to monitor the completion of the treatment program and we would be concerned that any subjective assessment of when a program was 'duly completed' would add further inconsistencies into the system.
- The difficulty of reinstating the reduced period if the treatment program was not duly completed would cause confusion and administrative difficulties for the ADO and the sport.

**Code Article 10.2.4.1 violations are currently excluded from the multiple violation regime described in Code Article 10.9.1 (per Code Article 10.9.2). The Code Drafting Team wishes to explore the possibility of removing this exclusion, at least where two violations subject to article 10.2.4.1 are committed.**

We **do not agree** that Code Article 10.2.4.1 should no longer be excluded from the multiple violation regime under Code Article 10.9.1 (per Code Article 10.9.2).

Relying on the exclusion has achieved a fairer result in Australian cases and we would support the continued exclusion of the SOA provisions from the multiple violations provision.

- Multiple violations for a SOA should not give rise to a consideration of a lifetime period of ineligibility – this is an issue not related to performance in sport.
- If there is a desire to address multiple violations this should be dealt with under a separate regime that is focussed on this issue and that does not automatically default to Article 10.9.1.

**To link the temporal aspect of Article 10.2.4 not to the Code definition of “In-Competition” but rather to an adequate fixed period between ingestion and the actual competition in question (to be defined taking into account the potential doping effect).**

We **do not agree** the temporal aspect of Article 10.2.2 be linked to an adequate fixed period between ingestion and the actual competition in question (to be defined taking into account the potential doping effect) for a number of reasons.

Foremost, changing from the established 'In-Competition' definition (that is consistent and well understood) to a time period that varies depending on the substance and the potential doping effect will be too complex for Athletes to understand (and comply with) and is likely to cause confusion across all stakeholders.

The rules already require the use of a SOA to be unrelated to sport performance, so adding specific timeframes for each SOA would over-complicate the rules. The purpose is for Athletes who test positive for a SOA to receive help,



as quickly and efficiently as possible and not be punished unnecessarily for failing to comply with complex technical issues.

**To clarify that this specific sanctioning regime can apply to other uses of those substances, e.g., coca tea or coca leaves.**

We **agree** this specific sanctioning regime should apply to other uses of substances such as coca tea or coca leaves.

**Other comments**

*Criteria for including a Prohibited Substance as a SOA*

We encourage the Drafting Team to consider whether more specific criteria for including a Prohibited Substance as a SOA be included in a standard or guidelines to provide more certainty about the substances that may fall within this regime. For example, we continue to advocate for the inclusion of methamphetamine as a SOA due to its prevalence as a 'recreational drug' in Australia that is 'frequently abused in society outside the context of sport'. In our view the SOA regime would be more widely supported if the reasons for including a Prohibited Substance as a SOA were publicly available.

*Separating the SOA regime*

Given the unique purpose and application of the SOA regime, the Drafting Team may wish to consider relocating the SOA regime under a separate appendix/standard to clearly identify that this regime deals with behaviours unrelated to sport performance.

This approach would allow the regime to be distinguished from the other anti-doping rules and more easily amended (if required) while remaining legally enforceable. Adjustments to other provisions such as those dealing with trafficking, publication, and multiple violations of SOA could be included altogether in the one place for clarity and ease of use.

**NADO Flanders**

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

1. on the Substance of Abuse treatment program

For some substances of abuse, athletes are very dependent on the availability of such treatment programs in order to get the reduction. Even in countries such as Belgium with a robust social security, this is not per se covered by the social security program, and if this is occasional use, it will sometimes mean resources for substance of abuse addiction will spent on non-problematic users. It also puts a burden on health care professionals when athletes that do not have a substance of abuse addiction pattern, come to seek treatment solely for their benefit of having a reduced sanction.

On the other hand, it again creates inequality in the sense that lower level athletes with limited financial resources will have to revert to public treating programs with the risk of being rejected for treatment, and others with vast resources will be able to pay for private treatment programs. We do not disagree in principle with the possible reduction, but would like to see a more diversified approach towards lower level athletes.

2. Multiple violations for substances of abuse

For the application of a multiple violations rule, NADOF is in favor of having a multiple violations rule for substances of abuse, limited to multiple violations concerning substances of abuse. For a second violation, it would also be more appropriate to still have a reduction for a treatment program (with the start of such program being sufficient to meet the criteria for such a reduction). Multiple violations with substances of abuse are an indication of a persisting problem, possible addiction, and this serves as an incentive to deal with a problem of abuse of such substances.

There is however no support to re-include substances of abuse in general in the multiple violations rule.

### 3. re-defining the time frame for the reduced sanction on substances of abuse

For the temporal aspect, changing the time frame is in principle supported by NADO Flanders, but it does not address the difficulty of determining if the use occurred in the set time frame, or outside. It remains a question of concentrations. Changing the time window does not alleviate the burden on the ADO either to contest the time of ingestion as declared by the athlete, or to interpret the scientific evidence and the concentration reported by the lab. In principle, as a legal concept, there is no objection to abandon the specific link to the in-competition period, but it still makes it difficult to put into practice. Concentrations can vary widely between individuals taking into account the active component of a substance (or the purity of the drug) and other individual factors such as dose tolerance, cumulative effect of repeated use, etc. The flat rate sanction was implemented to save time and costs in such cases, but in practice, given specific circumstances that can vary from country to country, resources are still being spent on discussions on concentrations, especially in countries like Belgium where substances like cannabis are illegally available in high THC concentrations, which ultimately leads to much higher concentrations of metabolites. These concentrations are in the guidance document described as presumed to be used in competition.

More scientific guidance should be put in place, to ensure that the concentrations not only reflect a single occasional use, but also take into account occasional heavy use or repeated use. This is not in the concept, but NADOF does want to add this, in combination with a change in time frame and a possible adjustment of concentrations in the current guidance document on substances of abuse.

#### **ONAD Communauté française**

Julien Magotteaux, juriste (Belgique)  
NADO - NADO

SUBMITTED

### 2) Results Management of Substances of Abuse :

In relation to the first question asked for this concept, the further reduction of the period of ineligibility related to a treatment program should be removed because this provision is very complex to implement and it falls out of the scope of the ADO's.

In relation to the second question, the exclusion of Violations under Code article 10.2.4.1 from the multiple violation regime should be removed, at least where two violation subject to article 10.2.4.1 are committed.

In relation to the third question, ok to eventually link the temporal aspect of Article 10.2.4 not to the Code definition of "in competition" but rather to an adequate period of time between ingestion and the actual competition, taking into account the potential doping effect. But there are many chances that this period of time would be different from a substance of abuse to another.

In relation to the fourth question, ok to clarify that this specific sanctioning regime can apply to other uses of those substances, e.g., coca tea or coca leaves, when the concentration is higher than the decision limit.

#### **RUSADA**

Kristina Coburn, Compliance Manager (Russia)  
NADO - NADO

SUBMITTED

RUSADA proposes, that the further reduction of the period of ineligibility related to a treatment program be limited to a second violation involving a substance of abuse

As it is also suggested that the provisions of the Code Article 10.9.2 is not bound by the definition 'In-Competition', an adequate fixed period between ingestion and actual competition in question shall be clearly defined or

established.

### Anti-doping Bureau of Latvia

Mārtiņš Dimants, Director (Latvia)

NADO - NADO

SUBMITTED

Implementing a treatment program for cases involving substances of abuse is an exceedingly challenging process. In Latvia, accessing a narcologist promptly is nearly impossible, rendering the initiation of a treatment program equally difficult. Consequently, LAT-NADO supports the idea that this provision should be either eliminated or modified. It is crucial to ensure that the provision is realistically feasible and applicable in practice.

### Sport Ireland

Melissa Morgan, Anti-Doping Testing and Quality Manager (Ireland)

NADO - NADO

SUBMITTED

WADA has outlined four proposals with a view toward harmonising approaches and ensuring consistent treatment of Athletes. The first proposal deals with treatment programmes and, in this regard, it is noted that there is a suggested option to remove the provision around further reduction of the period of ineligibility related to a treatment programme. The adequacy and appropriateness of treatment programmes are generally outside the expertise of Anti-Doping Organisations, can vary significantly from country to country in terms of content and availability and, as such, we believe this provision should be removed in its entirety.

The second proposal explores the possibility of removing the exclusion of Code Article 10.2.4.1 violations from the multiple violation regime described in Code Article 10.9.1. In exploring this possibility, due consideration should be given to the fairness to Athletes. For example, an Athlete who was subject to a 2-year ban, could be banned for 24 months if they test positive for cocaine or cannabis. Similarly, 3 Substance of Abuse violations could lead to a lifetime ban, which appears entirely inappropriate and disproportionate.

The third proposal, suggesting a change in the temporal aspect of Article 10.2.4 to an adequate fixed time period between ingestion and the actual competition in question (to be defined taking into account the potential doping effect), appears unnecessary. Why is this being proposed - is there evidence to suggest that there is a widespread practice of an Athlete taking cocaine, for example, a day or two before a competition to gain an advantage?

It also appears incongruent with the requirement to establish that it was taken in a context unrelated to sport performance. We presume that potential doping effects vary from substance to substance, and in reality from person to person.

Sport Ireland has no difficulty with the fourth proposal regarding coca tea etc.

### USADA

Allison Wagner, Director of Athlete and International Relations (USA)

NADO - NADO

SUBMITTED

The Concept paper sets forth a number of issues related to the application of this provision, which will be addressed in turn.

Issue: Should the one-month period of *Ineligibility* remain for completing a substance abuse treatment program because it is not practical/realistic for a treatment program to be completed within a month?

Recommendation: The shortened period of ineligibility is helpful when no treatment program is recommended for athletes serious about addressing their violation and any potential abuse problems. The shortened period of ineligibility can be applied to athletes who after receiving a full assessment, no treatment is recommended, and if

treatment is conditioned, it should be conditioned on enrollment as opposed to completion. This makes sense both because someone using a Substance of Abuse recreationally does not mean they necessarily have an addiction or dependency and someone who does have a dependency will need treatment for much longer than one month.

The changes can be accomplished by adding language to Comment 60 regarding Article 10.2.4.1, making clear that a full assessment with no recommendation for additional treatment is sufficient to satisfy the program requirement, and enrollment, as opposed to completion is also sufficient, if treatment is recommended.

Issue: "Code Article 10.2.4.1 violations are currently excluded from the multiple violation regimen described in Code Article 10.9.1 (per Code Article 10.9.2). The Code Drafting Team wishes to explore the possibility of removing this exclusion, at least where two violations subject to article 10.2.4.1 are committed."

Recommendation: USADA disagrees with removing the exception for substances of abuse. USADA has seen many positives for cannabinoids that result from out-of-competition use. Urine is a poor matrix to evaluate in-competition use for cannabinoids because the more the substance is used, the higher the concentration will remain in the urine for longer periods. USADA strongly advises consideration of adoption of alternative matrix collections for athletes in competition to establish more appropriate in-competition detection windows with the goal that it should be a reduced sanction or potentially not be a violation if the substance is prohibited in-competition only and it can be conclusively determined that the substance was not ingested in competition and had no performance benefit at the concentration observed in the sample. Consideration could also be given to allowing ADOs to collect DBS or other matrices to be analyzed only if there is a need to do so based on a positive urine sample for an in-competition only substance. Until there is an adequate matrix to differentiate between in-competition and out-of-competition use, sanctions for marijuana taken out of competition should not be increased, even for multiple violations.

For substances of abuse, the goal is treatment not punishment. So, for multiple violations of substances of abuse, the treatment assessment process can be required to receive a reduced sanction for multiple violations as opposed to an increased period of ineligibility.

Issue: "To link the temporal aspect of Article 10.2.4 not to the Code definition of 'In-Competition' but rather to an adequate fixed period between ingestion and the actual competition in question (to be defined taking into account the potential doping effect)."

Recommendation: Given the "doping effect" window for these drugs is narrow, it is unclear what advantage specialized windows for each substance of abuse would have, but it would make it more complicated and less athlete-friendly to enforce. The rules already require use to be unrelated to sport performance, so adding specialized windows for each substance of abuse seems to over-complicate the regulations. The purpose is for athletes who test positive for substances of abuse to receive help, as needed, not punishment.

Issue: "To clarify that this specific sanctioning regime can apply to other uses of those substances, e.g., coca tea or coca leaves."

Recommendation: This is a good point to clarify. Even if not the original purpose of the provision, sanctioning athletes more harshly for ingesting coca tea than those who used cocaine at a party the day before a competition seems incongruous and unfair.

## **NADA India**

NADA India, NADO (India)  
NADO - NADO

SUBMITTED

-Consider maintaining the reduction in ineligibility related to a treatment program but redefine criteria for completion. The completion program (for the treatment) shall be well documented and the criteria shall be well defined.

-Extend the regime's applicability to diverse substances like coca tea, recognizing cultural nuances.

-Harmonize global approaches through enhanced communication channels and technology to share best practices

## Drug Free Sport New Zealand

Nick Paterson, Chief Executive (New Zealand)

NADO - NADO

SUBMITTED

### Enrolment vs., completion of treatment programme

**We support the concept** that the athlete can satisfy the substance of abuse treatment programme requirement through enrolment into the programme, as opposed to completion of the programme, with the ability to reinstate the reduced sanction due to non-completion. We consider this to be a practical approach that we have seen work well operationally.

### Three to one month reduction in sanction

**We partially support the concept.** We support leaving in place the potential reduction in sanction from three to one months upon the completion of a treatment programme for the **first** SoA violation only.

We consider that this encourages athletes to seek medical support for addictive substances frequently abused in society, and we see this as an opportunity for athletes to seek medical support for other issues that may result in the use of such substances.

See the comment below regarding the incentive to seek treatment for any subsequent violation.

### SoA and multiple violations

We consider that the following approach should be taken to SoA multiple violations:

- If the athlete completes a treatment programme for both the first and the second SoA violations, the first two violations will not count towards multiple violations, but any subsequent violations will.
- If the athlete incurs a second violation and does not complete a treatment programme for that violation, that second violation will start counting towards multiple violations.
- WADA might also consider for a second violation that the sanction be 6 months, reduced to 3 months if a treatment programme is completed (enrolled).

This becomes the incentive for the athlete to access a treatment programme in place of the current availability of the reduction from a three month to one month sanction for a second violation.

For example:

- First SoA violation – three months, or reduce to one month with treatment programme – does not count towards multiple violations regardless of whether treatment programme is completed or not.
- Second SoA violation – starts counting toward multiple violations unless a treatment programme is completed.
- Third SoA violation – counts towards multiple violations (either first or second violation depending on the above situation).

We acknowledge that this approach may be overly complicated but consider that any approach should be focused on encouraging an athlete to access medical support given the premise of SoA is that they are frequently abused in society.

### Introduction of temporal aspect to SoA instead of OOC use

Clarity is required as to whether the concept intends to only give athletes the benefit of SoA reductions if they can prove, for example, that use was at least three days prior to the start of competition, presumably to ensure a lower concentration in the athlete's system and therefore lessen any performance enhancing effect.

**We do not support this concept** because of the following concerns:

- The introduction of a pre-comp prohibited period, in addition to OOC and IC is a new concept which is likely to create confusion for athletes.
- This will significantly limit the application of SoA provisions, which were introduced to acknowledge the abuse of these substances outside of a sporting context.
- The evidential burden is difficult (e.g., if the presence concentrations were high, would that indicate use within the pre-competition period, which would effectively remove the application of SoA sanction reductions).

#### **Other uses of SoA**

**We support the concept** but suggest that a better approach might be to add to the list of substances described as SoA to include, by way of example, coca tea or leaves.

**KADA**

Shinhyeong jang, Legal / manager (Korea)  
NADO - NADO

SUBMITTED

#### **A. Re-adjusting the timing of mandatory temporary suspension for 'cases where there is no fault or negligence'**

##### **o In practice, lifting temporary suspension in cases without fault or negligence is ineffective.**

- Currently, a mandatory temporary suspension can be lifted when (1) it is recognized that the violation is likely to have been caused by a contaminated product or (2) it is proven that the violation is related to an abused drug and that the athlete used it outside of the competition period and therefore is irrelevant to the competition performance for the event, through a temporary hearing by the Sanctions Committee.

- In practice, 'cases where there is no fault or negligence' are rare in the case of non-specific drugs, and if the athlete is imposed a final suspension by the sanctions or appellate body after the suspension is revoked, the final date of the athlete's sanction decision will be delayed, which means that it is largely ineffective.

- It is also possible to consider a plan to exclude cases with a very low probability of fault or carelessness from the subject of mandatory temporary suspension and include them in the requirements for selective temporary suspension and impose it selectively.

#### **[Ex. Starting point of athlete's suspension according to the suspension imposition timing]**

##### **o Violation of Regulations: October 1, 2023**

- Option1. Starting point of suspension when the mandatory temporary suspension is imposed (October 10, 2023)

##### **o Mandatory temporary suspension is imposed, Sanctions Committee decides suspension of six months ( Final suspension period: October 10, 2023 – April 9, 2024)**

- Option2. Starting point of suspension when the suspension is imposed by the Sanctions Committee (November

10, 2023)

**o Suspension Period: November 10, 2023 – May 9, 2024**

**Finnish Center for Integrity in Sports (FINCIS)**

SUBMITTED

Petteri Lindblom, Legal Director (Finland)  
NADO - NADO

We think that ADOs should not evaluate or control athletes' treatment program. It is impossible to create such a system that the evaluation process is same all over the world. It is important to note that the "completion" feature of the Substance of Abuse treatment programme cannot be maintained. It is obvious that the programme cannot realistically be completed within the lockdown period So, we think that it should be removed from the Code. We think that this violation should not be handled as multiple violation but instead of that, those violations should be handled so that 1. violation is 3 months, 2. is 6 months and 3. is one year.

**UK Anti-Doping**

SUBMITTED

UKAD Stakeholder Comments, Stakeholder Comments (United Kingdom)  
NADO - NADO

The introduction of the Substance of Abuse provisions within the 2021 Code was welcomed and to date, these provisions in practice have largely been successfully implemented. However, one practical issue is that the Substance of Abuse programme is very difficult to *complete* within the requisite time in order to receive a one (1) month ban. Whilst the proposal that the condition for reduction could be satisfied by an Athlete *enrolling* on an approved treatment programme would appear to address this issue, this will inevitably and disproportionately lead to more work for ADOs. With the current Code, the onus is on the Athlete to engage with a programme in a timely manner and complete it as soon as possible. If a reduction were to be made available upon enrolment, an ADO would be required to monitor the progress of the programme through to completion and would require an ADO to utilise further resource to issue another decision if reinstatement was required in the event of non-completion. The prospect of reinstating a period of Ineligibility means that such cases will be results managed less efficiently, not more.

UKAD is supportive of the Substance of Abuse Treatment programme and so whilst its removal (or limitation to a second violation only) may make results management of these cases more straightforward for ADOs, this may result in Athletes who need to access support and treatment, not being able to do so or being less inclined to do so.

UKAD does not support the suggestion of including Code Article 10.2.4.1 violations within the multiple violation regime. To do so, would seek to undermine the rationale for introducing the Substance of Abuse provisions in the first place (i.e. to address societal issues of drug misuse and abuse) and be purely punitive.

UKAD is (in principle) supportive of linking the temporal aspect of Code Article 10.2.4 to a fixed period rather than the "In-Competition" definition, given the challenges it has posed in practice to date.

Clarification that this specific sanctioning regime can apply to other forms of these substances e.g. coca tea or leaves, is welcomed.

On Substance of Abuse cases more generally, we have seen the [WADA Guidance Note](#) successfully challenged in cases. We ask that further information is provided as to how the concentrations cited in the note which are deemed "more likely to correspond with In-Competition use", were arrived at, so that ADOs can be assisted in the results management of these cases.

**Anti-Doping Norway**

SUBMITTED

Martin Holmlund Lauesen, Director - International Relations and Medical (Norge)  
NADO - NADO

In our view, athletes with the greatest need of treatment are the ones with an addiction. However, given the uptake of some of some of these substances in the body – especially for people with addiction – their concentrations in the urine may not be sufficiently low to demonstrate OOC-use. These athletes will therefore most likely not be affected by art. 10.2.4.1.

Furthermore, our experience is that it can be difficult to find a program that will be accepted by our ADO as there are only very few and they are often quite expensive. We support the suggestion of removing the possibility of reduction to one month if the athlete complete a Substance of Abuse treatment program. Alternatively offering such a reduction could be considered only where two or more violations subject to art. 10.2.4.1 are committed.

There is a big difference between competing at 8AM and 8PM considering the illegal substance was admitted before 11:59PM the day before. We therefore support the suggestion of an adequate fixed period between the ingestion and the competition.

We fully support clarification related to the last bullet point.

### Canadian Centre for Ethics in Sport

SUBMITTED

Elizabeth Carson, Senior Manager, Canadian Anti-Doping Program (Canada)  
NADO - NADO

The CCES is not in favour of eliminating the reduction, nor of limiting the reduction to a second violation.

The CCES agrees with the condition being met upon *enrolment in* a treatment program, as opposed to on completion, as treatment programs for such substances may be indefinite. The possibility of reinstating the reduced period remains an option if deemed necessary.

The CCES supports the removal of the exclusion of 10.2.4.1 violations from 10.9.1 where at least two violations are committed, such that once two 10.2.4.1 violations are incurred by an athlete, they count as one violation under 10.9.2.

Regarding the in-competition period, clarification would be important on the intent to go backwards or forwards with a “fixed period,” and how that would be measured.

The CCES agrees with adding clarification for the use of other substances like coca tea/leaves.

### CHINADA

SUBMITTED

Yao Cheng, Result Management (China)  
NADO - NADO

**Comment 1:** We support removing this specific sanctioning regime applicable to substances of abuse as stated in Article 10.2.4. We believe that the sanction for substances of abuse has already been substantially mitigated as compared with those of non-specified substances and specified substances. For the sake of maintaining a fair sanctioning regime, the three-month period of ineligibility should not be further reduced.

**Comment 2:** In view of the fact that substance of abuse treatment programs may vary widely and may not be applicable to all signatories, a further reduction from three months to one month would undermine the equity of the sanctioning regime.

### Japan Anti Doping Agency

SUBMITTED

YUICHI NONOMURA, Result Management (??)  
NADO - NADO

We support the proposed point #3 - "To link the temporal aspect of Article 10.2.4 not to the Code definition of "In-



Competition" but rather to an adequate fixed period between ingestion and the actual competition in question (to be defined taking into account the potential doping effect)". However, we concern whether it is possible to establish an adequate fixed period. To ensure the consistency of sanctioning period (even though the recreational use) and clean sport environment, the scientific evidence is required on whether the duration of continued doping effect varies depending on the type of Substances of Abuse and the frequency of use of that substances. Proposed point:#1 - a fixed sanction could sustain the consistency. Some ADOs cannot necessarily "identify and approve legitimate and reputable" treatment program due to resources and/or legislative constraints. Proposed point#2 - disagree. If the athlete committed ADRV as the second violation with the same reason, it means that deterrence (including the fact that the athlete has done a treatment) has not worked, hence this clause should not be applied re. strict liability perspective.#4 - If we include "other uses of those substances" as Substances of Abuse, scientific evidence is necessary and if those substances do not have performance enhancing. Also, establishing "frequently abused in society outside of the context of sport" is needed.

## Swiss Sport Integrity

Ernst König, CEO (Switzerland)

NADO - NADO

SUBMITTED

Issue: "Substances of Abuse (Art. 10.2.4.1) - the possibility of a further reduction of the period of ineligibility to one month, shall it be removed or not?"

The shortened period of ineligibility is helpful when no treatment program is recommended for athletes serious about addressing their violation and any potential abuse problems. The shortened period of ineligibility can be applied to athletes who after receiving a full assessment, no treatment is recommended, and if treatment is recommended, it should be conditioned on enrolment as opposed to completion. The changes can be accomplished by adding language to the comment regarding Art. 10.2.4.1.

Although there are some practical issues: It is difficult to get a timely appointment with most institutions or persons that diagnose an addiction problem and recommend treatment. It could take longer than one month.

From a practical perspective: Swiss Sport Integrity did not yet have any cases where a reduction to one month could have been possible.

Issue: "Art. 10.2.4.1 violations are currently excluded from the multiple violation regimen described in Art. 10.9.1 (per Art. 10.9.2)."

An Art. 10.2.4.1 violation is given when there is an out-of-competition use of a substance prohibited in-competition, typically cannabis (THC). Swiss Sport Integrity has seen positives for cannabis that result from out-of-competition use. Technically, the violation does not consist in the use of the substance but in the participation in the competition, and most importantly, it is unrelated to sport performance. For substances of abuse, the goal is treatment not punishment. So, for multiple violations of substances of abuse, it would be manifestly unfair to receive an increased period of ineligibility when a substance is detected in-competition but the ingestion took place out-of-competition, which is, simply put, not prohibited. Also, urine is a poor matrix to evaluate in-competition use for cannabinoids because the more the substance is used, the higher the concentration will remain in the urine for longer periods. Swiss Sport Integrity strongly advises consideration of adoption of alternative matrix collections for athletes in competition to establish more appropriate in-competition detection windows with the goal that it should be a reduced sanction or potentially not be a violation if the substance is prohibited in-competition only and it can be conclusively determined that the substance was not ingested in competition and had no performance benefit at the concentration observed in the sample. Consideration could also be given to allowing ADOs to collect DBS or other matrices to be analyzed only if there is a need to do so based on a positive urine sample for an in-competition only substance.

Issue: "to link the temporal aspect of Art. 10.2.4 not to 'in-competition' but rather to an adequate fixed period between ingestion and the actual competition in question (to be defined taking into account the potential doping effect)."

Swiss Sport Integrity disagrees. These substances are only prohibited in-competition. A fixed period between ingestion and the actual competition would then make these substances "prohibited out-of-competition in the fixed window". Swiss Sport Integrity thinks that this would be more complicated to handle as the elimination of the substances from the organism can vary greatly from person to person.

Given the "doping effect" window for these drugs is narrow, it is unclear what advantage specialized windows for each substance of abuse would have, but it would make it more complicated and less athlete-friendly to enforce. The rules already require use to be unrelated to sport performance, so adding specialized windows for each substance of abuse seems to over-complicate the regulations. The purpose is for athletes who test positive for substances of abuse to receive help, as needed, not punishment.

Issue: "to clarify that this specific sanctioning regime can apply to other uses of those substances, e.g., coca tea or coca leaves."

This is a good point to clarify. Even if not the original purpose of the provision, sanctioning athletes more harshly for ingesting coca tea than those who used cocaine at a party the day before a competition seems incongruous and unfair.

Further, clear substances of abuse should be added to the prohibited list, such as Crystal Meth, which is clearly highly addictive and might lead to the athlete's destruction rather than enhancement of sport performance.

## Dopingautoriteit

Robert Ficker, Compliance Officer (Netherlands)  
NADO - NADO

SUBMITTED

### 7.2. Relevant provision

Article 10.2.4.1 reads as follows:

*10.2.4 Notwithstanding any other provision in Article 10.2, where the anti-doping rule violation involves a Substance of Abuse:*

*10.2.4.1 If the Athlete can establish that any ingestion or Use occurred Out-of Competition and was unrelated to sport performance, then the period of Ineligibility shall be three (3) months Ineligibility. In addition, the period of Ineligibility calculated under this Article 10.2.4.1 may be reduced to one (1) month if the Athlete or other Person satisfactorily completes a Substance of Abuse treatment program approved by the Anti-Doping Organization with Results Management responsibility.<sup>60</sup> The period of Ineligibility established in this Article 10.2.4.1 is not subject to any reduction based on any provision in Article 10.6.*

### 7.3. Issue:

-Doping Authority Netherlands agrees with the Code Drafting Team that the Substances of Abuse provisions in the Code should be further clarified.

-With respect to the possibility of an one-month period of ineligibility after successfully completing a Substances of Abuse program, we consider that not every AAF resulting from substances of abuse necessitates a treatment program. Not every AAF for substances of abuse is related to an addiction problem and therefore a treatment program is not automatically opportune for every AAF.

### 7.4. Recommendations:[\[1\]](#)

- The Substances of Abuse provisions are a specific sanctioning regime applicable to prohibited substances that was introduced in the 2021 Code, because these substances are frequently used in society outside of the context of sport. The fact that also athletes frequently use these substances makes it less logical to add them to the multiple violation regime described in Article 10.9.1. The substances of abuse regime was introduced because of frequent use, which in our view encompasses repeated use and also repeated AAFs for substances of abuse. Doping Authority suggests to stick to the current regime: if an athlete can establish that the repeated use was out-of-competition and outside a context not related to sports, an athlete is entitled to a lower suspension, also in case of repeated violations.

- Doping Authority is of the opinion that it makes more sense to establish a substances of abuse treatment program as an option for a second offense to compensate for not becoming a second offense. In case the athlete refuses to enter a treatment program, article 10.4.2 applies. Or alternatively if the athlete is unwilling to enter a treatment program, article 10.9.1 apply.

- With respect to enrolling of completing the treatment program, Doping Authority will considers that it will take time to find, enroll (with possible waiting lists) and complete such a treatment program. Therefore, it would be logical to grant the reduction before the treatment program is completed and if it is eventually not completed, the original sanction (three months) is restored.

- Taking into account that competitions may be scheduled all throughout the day (from relatively early in the morning, i.e. during the night to somewhere in the evening), the current reference to the definition of 'In-

Competition' leads to unequal treatment of athletes. Doping Authority therefore supports the suggestion of introducing fixed periods between ingestion and competition.

- Doping Authority considers it a stretch to consider coca tea a Substance of Abuse. Coca tea is not frequently abused outside the context of sport. Although it is difficult to consider coca tea a Substance of Abuse, it is important that cases arising from e.g. drinking coca tea can proceed speedily through the results management process. Doping Authority Netherlands therefore supports the suggestion by the Code Drafting Team.

[1] This list follows the list used by the Code Drafting Team at concept #2.

### Anti Doping Danmark

Silje Rubæk, Legal Manager (Denmark)  
NADO - NADO

SUBMITTED

We support that there is a need for clarification addressing substances of abuse.

In Denmark we have encountered several cases involving cannabis where it is our experience that it is mainly chronic users who exceed the limit value for cannabis. They achieve significantly higher concentrations than the limit value set out in the guidelines, even if the intake is out of competition. But due to the very high concentrations, it is not possible to state that the intake is taken out of competition, and therefore it is not possible to give them a 3-month sanctions and instead they get 2 years. Furthermore, they are deprived for the option of a reduced sanction through substance abuse treatment, even though these might be the athletes that need it the most.

We support to keep the possibility of a reduced sanction through a treatment program, but we don't think that it is a good idea to clarify that the condition is met by enrolling in the treatment. We still support that the program should be completed.

We support increased flexibility in sanctions, allowing the possibility of giving athletes with a very high concentration of cannabis a 3-month sanction. This can be done by removing the guidelines and instead base the "in/out competition" on the athlete statements, testimony, and case story.

Alternatively, we propose to establish a specific rule regarding cannabis, which remove cannabis the substances of abuse category and give a flat 3-month sanction for cannabis instead of the need for the guidelines.

If none of the above is considered, we propose to open up for the possibility of athletes positive for cannabis with high concentration, is given the option to train under their sanction, which is also mentioned under concept #4.

### Freelance journalist

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

It would be better to impose a standard three-month suspension for all cases under this category. It may be advisable to include this in the rule related to "multiple violations".

### Sports Tribunal New Zealand

Helen Gould, Registrar (New Zealand)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

1. Keeping the reduction for a first violation is desirable. We agree that the provision relating to the treatment programme should be changed so that the reduction is given on enrolment to the provision but should be increased to three months if the athlete does not complete the programme.

2. The substance of abuse exclusion should not be removed from the 10.9.2 provisions.
3. An adequate fixed period may provide more certainty and direction for athletes.

### **International Testing Agency**

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

SUBMITTED

- Removal of treatment program for the 1st ADRV for Substance of Abuse; a 3-month sanction would apply across the board; if a treatment program is maintained, prove of enrolment (and not satisfaction) is the requirement to satisfy to have the sanction reduced.
- The exclusion of 10.2.4.1 of the multiple violation regime of 10.9.1 should be maintained as a matter of principle. However, in the event of an additional ADRV for a Substance of Abuse, the sanction would be to be added up double (going to 6 months for a second ADRV; 9 months for a third ADRV). Then the treatment program would be available for multiple offenders in order to see this increased sanction reduced.
- In our experience the cut-off based on the OOC vs IC definition has been easy to implement and did not lead to disproportionate outcomes.
- We support the inclusion of other uses of those substances in the specific regime.

### **Charles University, Faculty of Law**

Jan Exner, Assistant Professor (Czech Republic)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

### **Ingestion or use of substances of abuse out of competition unrelated to sports performance (Article 10.2.4.1 of the WADC 2021)**

Based on my research, I welcome that WADA emphasizes athletes' health over the level playing field in sanctioning substance abuse in sports. The WADC 2021 correctly motivates athletes to obtain a treatment to have the ineligibility reduced to one month. As such, WADA follows the best practices in many sports where players get support through dedicated treatment and rehabilitation programs and not through punitive sporting sanctions. Therefore, I recommend keeping the possibility of the reduction related to a treatment program. I do not recommend removing such a possibility or limiting it to a second violation. There are practical concerns that the potential of treatment programs might be redundant since there are long waiting lists, some programs take months to complete, and they can be very costly. Therefore, I welcome the idea of the drafting team that the condition for the reduction is met by enrolment in the approved treatment program, as opposed to completing the same. Consequently, there would be the possibility of reinstating the reduced period if the treatment program was not duly completed.

Moreover, I wonder why the WADC 2021 offers the opportunity to obtain treatment and have the ineligibility reduced only to athletes ingesting or using substances of abuse out of competition. Article 10.2.4.2 of Code 2021, which covers situations when athletes ingest, use, or possess substances of abuse in competition in a context unrelated to sports performance, does not include such an opportunity. My research suggests that the WADA did not want to provide any assistance to athletes who took a substance of abuse in competition. Nevertheless, athletes can face addiction issues regardless of whether they ingest or use substances of abuse in or out of competition. Therefore, my research recommends that all athletes should have the opportunity to obtain treatment and receive a milder sanction.

On top of that, my research demonstrates that the framework for sanctioning the ingestion or use of substances of abuse out of competition unrelated to sports performance in the WADC 2021 accommodates the requirements of proportionality better than the WADC 2015. On one hand, the new flat three or one-month ineligibility collides with the principle of individualization or personalization of punishments. All athletes who establish ingesting or using a

substance of abuse out of competition without relation to sports performance shall receive a ban of three, or one month. Therefore, hearing panels would not consider any further subjective or objective elements. As such, there would be no individual examination of the circumstances and the behaviour of the athlete, which may result in a lack of proportionality of the sanction and arbitrary or unequal treatment. Therefore, the question arises whether a short scale of sanction, for example between a mere reprimand and a six-month ineligibility, would be more proportionate since it would enable hearing panels to individualize the sanction according to the circumstances of a particular case.

Nevertheless, my research inclines to the new framework for sanctioning the ingestion or use of substances of abuse out of competition unrelated to sports performance concerning proportionality. On one hand, creating a short scale of sanctions would better accommodate the principle of individualization or personalization of sanctions. On the other hand, the scale would deny the goal of the provision to save resources spent on assertion and evidence of facts regarding the no significant fault or negligence arguments. Moreover, my research demonstrates that the flat three or one-month ineligibility complies with the principle of proportionality, as it is a relatively short sanction. As such, it restricts the personal freedom and other rights of athletes much less than the previous minimum twelve-month ban for using or ingesting particularly cocaine with no significant fault or negligence. Moreover, it better fulfils the goal of the provision to emphasize athletes' health. That is why I also recommend clarifying that this specific sanctioning regime applies to other uses of substances of abuse (coca tea or coca leaves). Moreover, I recommend keeping the violations excluded from the multiple violation regime according to Article 10.9.2 of the WADC 2021.

### **Ingestion, use or possession of substances of abuse in competition in a context unrelated to sports performance (Article 10.2.4.2 of the WADC 2021)**

Violations resulting from the ingestion, use or possession of substances of abuse in competition are not intentional if the athlete can establish that its context was unrelated to sports performance. My research demonstrates that the new concept correctly reflects the difference between intentional cheating on one hand, and the ingestion, use or possession without relation to sports performance on the other hand. Athletes who ingest, use, or possess a substance of abuse in competition should face a harsher sanction than athletes who use or ingest such a substance outside of competition. The reason is that the first scenario has a greater potential to endanger the athletes' health and that it violates the spirit of sport. Nevertheless, athletes ingesting, using, or possessing substances of abuse in competition, but in a context unrelated to sports performance, have a lower potential to disrupt the level playing field compared to real cheaters. Sanctioning both groups with the same basic four-year ineligibility would jeopardize equal treatment among athletes since different scenarios would result in the same consequences. In this regard, I understand the idea of the drafting team to link the temporal aspect of Article 10.2.4 of the WADC 2021 not to the in-competition period, but to a period between ingestion and the competition, considering a potential doping effect. On the other hand, I wonder how such a doping effect would be measured and how long the period would be in cases of various substances of abuse.

Overall, the WADC 2021 is a more suitable and proportionate response to athletes ingesting, using, or possessing substances of abuse in competition in a context unrelated to sports performance compared to the WADC 2015. The basic two-year period of ineligibility, which can be further eliminated or reduced, is suitable to protect the level playing field since it still excludes athletes from sporting activities for a considerable period. On the other hand, the two-year period of ineligibility is much less restrictive on the personal freedom and other rights of athletes than the career-ending four-year ban. Moreover, my research applauds that the ingestion, use or possession of substances of abuse in competition in a context unrelated to sports performance is not a basis for a finding of aggravating circumstances. Such circumstances lead to an increase in the basic period of ineligibility by up to two years, resulting in even a six-year ban for the first anti-doping rule violation, which raises red flags of proportionality.

For details of the research, see *Exner, J. (2022): Intent, Substances of Abuse, Aggravating Circumstances, Protected Persons and Recreational Athletes: Does the World Anti-Doping Code 2021 Provide Proportionate Sanctions? International Sports Law Journal, pp. 62-84.*

## **Concept #3 – Results Management of Whereabouts Cases (35)**

### **Team USA Athletes' Commission**

Meryl Fishler, Manger (United States)

Sport - Athlete Representative (State the name of the athlete body in Organization name)

SUBMITTED

1. - We do not support the concept that progressive weight should be used for whereabouts violations.
2. - We support the need for clarity so athletes fully understand what needs to be presented to mitigate their fault
3. - We do not support this failure. There could be scenarios where the arbitrator need to take into the elements listed in a whereabouts case.
4. - We don't believe our athletes view whereabouts violations as a paper violation at all. If this is the belief of WADA then it needs to educate athletes to make sure whereabouts violations are serious and not just a "paper violation"

### **Union Cycliste Internationale**

SUBMITTED

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

It seems not appropriate to establish a general principle regarding the weight of each whereabouts failure, in view of the fact that it should be a case by case assessment of each and of all three together.  
Current Article 10.3.2 of the Code is sufficiently clear. However, not only the irrelevant elements but also the relevant element for the determination of the sanctions could be specified through a comment.  
The importance and rationale of whereabouts requirements should not be specified in the Code, it is already included in the ISTI. This perception should change via education rather than via "paper".

### **National Olympic Committee and Sports Confederation of Denmark**

SUBMITTED

Mikkel Bendix Bergmann, Legal Advisor (Denmark)  
Sport - National Olympic Committee

#### **Concept #3 – Results Management of Whereabouts Cases**

The Danish NOC endorses the notion that each whereabouts failure should carry equal weight. This approach aims to foster fairness and equality in sanctions, prompting athletes to exercise heightened caution following initial warnings. Additionally, we view Article 2.4 not as a mere paper violation but as a straightforward and effective means to underscore the significance of the whereabouts system.

Furthermore, we support the imperative to clearly define, possibly through a comment or explicit definition, elements that are deemed irrelevant in determining whereabouts sanctions. It is our stance that factors such as an athlete's doping history, character, or credibility should not be within the purview of the hearing panel when considering whereabouts cases.

The system for whereabouts cases should be simple and easy to understand for both athletes and the hearing panel.

In the interest of clarity and accessibility, we advocate for a straightforward and easily comprehensible system for whereabouts cases. This simplicity is essential to ensure that both athletes and hearing panels can navigate the process with ease and understanding.

### **Botswana Football Association**

SUBMITTED

Boago Diphupu, Mr (Botswana)  
Sport - Other

Most important are whereabouts, the coach and parents should have an on going communication to limit free space for the children.

### **NZ Rugby**

SUBMITTED

Rebecca Giordano, Senior Legal Counsel - Regulations & Compliance (New Zealand)  
Sport - Other

In terms of the express feedback sought by the Code Drafting Team, we consider, equal weight should be given to the first, second, and third whereabouts failure.  
Further, we agree with all of the remaining points raised.

## UEFA

SUBMITTED

Rebecca Lee, Anti-Doping Team Leader (Switzerland)  
Sport - Other

UEFA partially supports the development of this concept

With respect to the weight of each whereabouts failure, UEFA has no particular comment.

For the second point, UEFA considers that the current wording is clear enough. For the third point, it could eventually be specified in a comment.

The fourth point is capital. The purpose of whereabouts requirements is to be able to locate an athlete on each day of a quarter in order for in-competition and out-of-competition testing to be done at any time without prior notice. This is key for an efficient anti-doping program and the rationale needs to be emphasised further.

## International Tennis Integrity Agency

SUBMITTED

Nicole Sapstead, Senior Director, Anti-Doping (United Kingdom)  
Sport - Other

(i) Weight should be given to each whereabouts failure separately when determining fault (i.e. four months each). Successive failures should be no more or less 'important' than preceding ones, as otherwise the perceived importance of first or second whereabouts failures could be downplayed.

(ii) Agree

(iii) Agree

(iv) Agree – along with further reinforcement of the onus being on athletes to make themselves available and DCOs not being required to turn investigators and being expected to make enquiries of neighbours for example or place themselves at risk of being a nuisance etc by having to ring the intercoms in apartments other than that of the athlete and to make enquiries of the athlete's whereabouts with neighbours

On a related note – the starting point for a whereabouts violation does on occasion seem at odds with the sanctions issued to an athlete for an anti-doping rule violations where they are able to reduce their sanctions below 12 months. The sanction could go lower than 12 months but only in limited circumstances such as where it is clear that, through the analysis of a pattern of behaviour or the fact that the athlete was for example In Competition and not out-of-competition at the time of a missed test (and therefore surely not seeking to hide from doping control). The ITIA considers that it might be possible that where the athlete can evidence that, whilst they might have been negligent, they were not deliberately seeking to avoid doping control there could be an opportunity to reduce the sanction further. This way ADOs are not sanctioning athletes who simply are unable to grasp the system or the need to update etc, with those that are deliberately careless or are seeking to evade testing.

## Sport NZ

SUBMITTED

Jane Mountfort, Principal Policy and Legal Advisor (New Zealand)  
Public Authorities - Government

This submission is made on behalf of Sport New Zealand, which is the Crown agency responsible for advising the New Zealand government on anti-doping policy and ensuring New Zealand's compliance with the International Convention against Doping in Sport 2005.

Sport NZ agrees that it may be appropriate to accord greater weight to additional whereabouts failures. However, we would need to consider specific proposals before offering a definite view.

We are unable to support making character considerations irrelevant when determining whereabouts sanctions without hearing the rationale for this proposal.

### Council of Europe

SUBMITTED

Council of Europe, Sport Convention Division (France)

Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

#### (partly) supported

Basically, each whereabouts failure must be examined separately and thoroughly (depending of the degree of fault); but athletes should bear higher attention to the whereabouts system after receiving a first (or second) warning.

It is suggested that the period of ineligibility for whereabouts in general should be adjusted. Clear examples (or references to CAS case law) for the application of proportionality aspects should be implemented in the Results Management for whereabouts. It is proposed to have a comparison with the approach in the Code on Specified Substances.

This does not contradict the majority view that the Code should clarify which aspects are irrelevant for determining an offence against Art. 2.4.

There is a strong consensus that Art. 2.4 is not just a "paper violation", but an important part of the offence and sanction system of the Anti-Doping rules.

### Anti-Doping Agency of Serbia

SUBMITTED

Bojan Vajagic, Director's Assistant (Serbia)

NADO - NADO

**Regarding the question of the weight that should be given to each whereabouts failure, progressive weight seems to us to be better option.**

### Organizacion Nacional Antidopaje de Uruguay

SUBMITTED

José Veloso Fernandez, Jefe de control Dopaje (Uruguay)

NADO - NADO

No comments. Approved 1st stage.

### Agence française de lutte contre le dopage

SUBMITTED

Adeline Molina, General Secretary Deputy (France)

NADO - NADO

- Il est effectivement nécessaire de clarifier quel poids doit être accordé à chaque manquement pour déterminer le degré de faute et la sanction appropriée. Si un poids progressif des manquements peut faire du sens dans certains cas, il peut aussi être injuste, notamment lorsque le troisième manquement relève d'une négligence très légère.

- Il n'est pas nécessaire de préciser que la période de suspension doit commencer à deux ans et ne peut ensuite être réduite à un minimum d'un an que si les athlètes peuvent établir des circonstances permettant d'atténuer leur faute. Le texte est suffisamment clair.

- Préciser que certains éléments ne sont pas pertinents pour déterminer les sanctions liées à la localisation pourrait être intégré directement à la définition de la faute, ce qui aurait le mérite de rendre ces éléments applicables aux



autres violations.

- L'importance et la justification des exigences de localisation mériteraient d'être effectivement précisées. Mais leur introduction dans un article du code serait difficilement transposable dans une loi nationale. Cette précision aurait toute sa place dans le SIGR ou le SIC, et permettrait de mieux fonder les manquements, en particulier lorsque sont en cause des modifications tardives ou des transmissions d'informations insuffisantes.

Pourraient d'ailleurs être envisagées des lignes directrices à l'attention des sportifs, pour les aider à appréhender leurs obligations et harmoniser les pratiques des OAD.

Il y a aussi lieu de reconsidérer la rédaction du SIC pour exiger expressément et clairement que les informations de localisation doivent être actualisées dès que possible après un changement de circonstances.

## NADA

SUBMITTED

NADA Germany, National Anti Doping Organisation (Deutschland)  
NADO - NADO

Statement 1/ Comment NADA: Partly agree / disagree

- Agree on the fact that the athlete needs to bear higher attention to his whereabouts after receiving the warning effect of prior Whereabouts failures
- However, a whereabouts failure due to missing the quarterly deadline should not weigh as high as a missed test if no further evidence lead to the assumption that the athlete misuses the filing failure to be unavailable for testing.
- In general: Sanctions for Art. 2.4 cases should be more flexible – like the sanction system for specific substances or specific methods (Art. 10.6.1.1.), starting with a reprimand and reaching a 2-year period of ineligibility at a maximum.

Statement 2 / Comment NADA: Agree

- Disciplinary bodies often understand the sanction system to be from one to two years period of ineligibility and are ready to impose a two-year period only in case of extraordinary fault or negligence shown by the NADO.

Statement 3 / Comment NADA: Agree

- Further to the examples stated above, clarification will be helpful that other elements (e.g. age of athlete, level of athlete) are already covered by the present system (e.g. Article 10.6.1.3).

Statement 4 / Comment NADA: Agree

- In particular, the athletes have to make three failures in only 12 months (including two “warnings”), not only one “mistake” once. If this happens, those athletes actually lack consent to the anti-doping system.

## Anti-Doping Sweden

SUBMITTED

Jessica Wissman, Head of legal department (Sverige)  
NADO - NADO

ADSE considers that the regulations regarding whereabouts needs to be highly prioritized in this revision and should apply to the regulations in the Code the IST and the ISRM (and/or guidelines). There is a need for clearer regulations and clarification/guidelines, to ensure that the regulations are interpreted the same way among ADO's, so the athletes are treated the same way, despite being in an International Registered Testing Pool or in a National Registered Testing Pool.

ADSE supports the proposal that the weighing to each whereabouts failure should be equal. The reasons for failures can vary a lot and the order of failures doesn't automatically say anything about the circumstances/severity of the failure. Each failure should be examined individually.

As to applicable sanction for an Anti-Doping Rule Violation, ADSE consider that there is a need for a more detailed specification/comment on how to evaluate the athlete's degree of fault. What is and what is not a mitigating factors/circumstances, examples are needed.

Further, ADSE agrees that the importance and rationale of whereabouts requirements, must be specified in the Code. Specifically, this applies to the *Failing failures*.

#### **ONAD Communauté française**

Julien Magotteaux, juriste (Belgique)  
NADO - NADO

SUBMITTED

### 3) Results Management of Whereabouts Cases:

In relation to the different questions asked for this concept:

- The weight of each whereabouts failure should be kept equal ;
- The period of ineligibility should be more flexible than now ( 2 or 1 year). In certain circumstances, it should be possible to go lower than one year;
- Ok to clarify in a comment that certain elements are irrelevant (e.g., no doping history). Like ADRV under article 2.1 of the Code, whereabouts failures are elements of strict liability.

#### **Sport Ireland**

Melissa Morgan, Anti-Doping Testing and Quality Manager (Ireland)  
NADO - NADO

SUBMITTED

Sport Ireland is of the view that implementing a progressive weight system would not be appropriate and appears to make no logical sense. For example, in such a system, more weight would be given to a third failure even if the violation is unintentional compared to a first failure which might have been intentional egregious. It would also be difficult to explain to Athletes the rationale behind giving added weight to a violation based strictly on where it falls in the sequence of violations.

#### **Canadian Centre for Ethics in Sport**

Elizabeth Carson, Senior Manager, Canadian Anti-Doping Program (Canada)  
NADO - NADO

SUBMITTED

The CCES doesn't necessarily agree with a progressive weight given between each of the three failures unless the circumstances of the failure warranted a different weighting scheme.

The CCES agrees with adding clarity regarding the fact that the two-year period of ineligibility is the *starting* point, as perhaps not all ADOs are starting at two years if WADA has identified a need for clarity.

#### **NADA Austria**

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

Regarding **Concept #3** (Result Management of Whereabouts Cases) we see the need for a reconsideration of the whole concept.

Whereabouts-information is essential to conduct out-of-competition testing, not more and not less. They are not there to have a deterrent effect, are not there to intimidate athletes or put pressure on them in case they are suspicious and there is no other way to sanction them. In this light it is questionable if a sanction of two years of ineligibility is proportionate. Athletes who intentionally commit ADRVs and admit them promptly, end up with a three-year sanction.

Suggested solution: If there is a suspicion that an athlete intentionally tried to evade doping controls with incorrect whereabouts, an ADRV for 2.3. should be pursued. All the other cases based on negligence or bad luck should be sanctioned with a with a reduced ban.

The current Whereabouts-rules are inconsistent and lead to confusion for athletes and a unharmonized approach among signatories. ISTI 4.8.8.6. states *“Where a change in circumstances means that the information in a Whereabouts Filing is no longer accurate or complete as required by Article 4.8.8.5, the Athlete shall file an update so that the information on file is again accurate and complete”*. WADA’s “template RTP inclusion notice” defines that *“However, if you simply change your regular schedule on an occasional basis, e.g., one Monday you decide as a “one-off” to train in the gym rather than the pool, but next Monday you plan to go back to your regular schedule of training in the pool, then you do not have to make any change to your whereabouts filing to reflect that “one-off” change.”* Something similar can be found in the ADAMS handbook. These two sentences contradict each other. Either the athletes must update their whereabouts or not. If the second sentence is the one that is deemed correct, the need to file of regular activities is useless. Every athlete could simply argue that they had a “one-off” when the DCO showed up.

On the other hand, we hear from many ADOs that athletes in outdoor sports do not file regular activities at all, because they claim that their activities are a) not regular because of weather influence or b) not suitable to conduct testing. Some of these sports (cycling, triathlon, cross country skiing, etc.) are high risk sports and it would be manifestly unfair if athletes in other sports would have to file regular activities and athletes in these high-risk sports are not required to do so.

Another problem is the different handling of “60-minutes-timeslot” and “regular activity”. In contrast to the timeslot, the DCOs are not allowed to call in the last 5 minutes of a regular activity to ensure that he/she is not at the specified location. This creates confusion among the athletes.

Suggested solution: In addition to the overnight address and competitions, there should only be the “60-minutes-timeslot” category, no regular activities anymore. In this new defined timeslot category, it should still be possible to call the doping controllers 5 minutes before the end of the time to ensure that the athlete is not at the specified location.

In parallel to this simplification, specific specifications are needed for the timing of the “60-minutes-timeslot”. Many athletes currently enter the timeslot for the off-peak times of the day (very early or late in the evening) in combination with the overnight location, as they are most likely to be at the overnight location at these times and therefore rarely must make updates. However, certain doping practices are difficult to detect, which is why doping controls are required at different times of the day. An early time slot (e.g. 5 a.m.) and an overnight address is not enough information for conducting a meaningful doping control during the day.

Therefore, the new timeslot regulation must provide concrete specifications for the timeslot. This could be, for example, that the timeslot can only be linked to the overnight location on three days per week. On the remaining four days of the week, the timeslot must be selected between 10 a.m. and 6 p.m. The timeslot can be specified as part of sports-related activities (e.g. training, physiotherapy, etc.), but does not have to be related to sports (e.g. staying at home or in the hotel a certain time).

The obligation to provide information for an entire quarter in advance leads to problems in practice. Many athletes do not know where they will stay overnight or train in two or three months. The solution is to enter placeholders, which then must be continually updated as soon as the locations and times become clear. If you forget to delete an entry that was made several weeks or months ago, you risk a filing failure or missed test.

In addition, the current regulation of quarterly submission means that even correctly sent whereabouts can lead to information less than two weeks in advance, as this example shows: e.g. entries must be made by September 20th for the entire 4th quarter. The next deadline is December 20th for the 1st quarter. If the entries are made exactly on end of the deadline - which is currently permitted - then, for example, on December 19th there will only be information for the next 12 days. To put it bluntly, this means that towards the end of the quarter the number of entries that could be used to carry out a doping control will be significantly lower due to the system.

When planning doping controls, many signatories only take the next one or two to a maximum of four weeks into account. The remaining information that goes beyond this planning horizon is not relevant in practice but means effort for the athletes and carries the aforementioned risk of incorrect entries due to a lack of updating.

Suggested solution: It is proposed to switch to a rolling period of 4 weeks instead of the four key dates per year on which whereabouts information must be entered for an entire quarter. This means that whereabouts information must be entered correctly at any given time for the next four weeks. In practice, this can be ensured, for example, if athletes check on a certain day of the week (e.g. Sunday) for the next four weeks whether their whereabouts information is still correct and make adjustments if necessary.

Short-term updates (e.g. due to cancellations, illnesses, injuries) must continue to be made. However, the focus should be on entries for which a doping control can be carried out (i.e. no entries for outdoor training) and that are highly likely to take place so that they do not have to be changed too often.

According to **Article 7.1.6 WADC** NADOs get in practice a lot of cases transmitted by IF's according to this provision. It is not clear, why ADO's should not deal on its own with those cases, especially when we take into consideration that in those cases the Anti-Doping-Rules of the relevant ADO (who transmitted the case) must be applied. In our view, the division of tasks here should be reconsidered.

## Sport Integrity Australia

Chris Butler, Director, Anti-Doping Policy and International Engagement (Australia)  
NADO - NADO

SUBMITTED

In general, we are **supportive** of the current whereabouts regime, the crucial need for whereabouts, and the way it is operating in the Australian context. We are **supportive** of the need to clarify the operation of the sanctioning regime relating to whereabouts provisions, as long as any attempt to explain the process and rules does not lead to greater complexity and confusion.

**Case law has brought to light certain issues relating to the determination of the applicable sanction for such Anti-Doping rule violations, in particular:**

**The weight to be given to each whereabouts failure, i.e., either equal weight given to the first, second, and third failure, or a progressive weight given to each of them (e.g., the second failure weighs more than the first and the third weighs more than the second).**

We **do not agree** with varying the weight given to each whereabouts failure as 3 violations are required to establish a possible ADRV. It is a 'rolling system' with the fault assessed across all three failures with the expectation that the athlete would be on heightened alert after the first and second failures.

**The need for more clarity regarding the fact that the period of ineligibility must start at two years and then, can only be reduced to a minimum of one year if athletes can establish circumstances to mitigate their fault.**

We **agree** that more clarity is beneficial.

**The need to specify, through a comment or definition, that certain elements are irrelevant for determining whereabouts sanctions (e.g., no doping history, good character, credibility).**

While some of those listed elements may be irrelevant in a particular case, it is still important to be able to rely on

evidence to distinguish between Athletes who commit a violation as a result of an intention to undermine the system and 'cheat', and those who fall foul of the rules due to incompetence, mistake or lack of understanding.

If the Drafting Team wishes to proceed with this proposal, then any comments or definitions will need to very clearly describe how these limitations would apply.

**The importance and rationale of whereabouts requirements, which must be specified in the Code, since Code Article 2.4 cases are wrongly perceived as a “paper violation”.**

We **agree** with this inclusion. The principles and rationale behind Code provisions are critical for understanding and interpreting the rules.

**USADA**

Allison Wagner, Director of Athlete and International Relations (USA)  
NADO - NADO

SUBMITTED

Article 10.3.2: Sanctions for Whereabouts Violations

The Concept paper sets forth a number of issues related to the application of this provision, which will be addressed in turn.

Issue: “The weight to be given to each whereabouts failure, i.e., either equal weight given to the first, second, and third failure, or a progressive weight given to each of them (e.g., the second failure weighs more than the first and third weighs more than the second).”

Recommendation: In evaluating fault, the athlete should be on heightened alert after a first or second whereabouts failure, so from that standpoint a progressive approach can be taken. However, the fault to be assessed is collective across all three whereabouts failures. Often the athlete only challenges one of the three whereabouts failures, so it could lend the hearing panel to focus on that particular failure. Care must be taken, and a Comment could clarify that the fault is to be assessed across all three failures with the expectation that the athlete would be on heightened alert after the first and second failures.

Issue: “The need for more clarity regarding the fact that the period of ineligibility must start at two years and then, can only be reduced to a minimum of one year if the athlete can establish circumstances to mitigate their fault.”

Recommendation: More clarity on this would be helpful. In any case where a range based on fault exists (e.g., NSFN), the athlete always presents circumstances that they argue demonstrate a mitigated fault level. Because the athlete always (at least in USADA cases) presents mitigating factors, in practical terms, there does not seem to be much difference between fault evaluated under 10.3.2 and under 10.6, as the ultimate question remains whether the arbitrator accepts the athlete’s mitigating factors.

USADA supports more flexibility in sanctioning to allow for a period of ineligibility below twelve months if the circumstances justify such a shorter period.

Issue: “The need to specify, through a comment or definition, that certain elements are irrelevant for determining whereabouts sanctions (e.g., no doping history, good character, credibility).”

Recommendation: It is not clear that the statement above is accurate. Article 10.3.2 states that a fault reduction below two years is not available to an athlete “where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the *Athlete* was trying to avoid being available for *Testing*.” If there are arguments on this issue, the arbitrator will rightfully consider character and credibility of the athlete. Additionally, whereabouts failures themselves require an ADO to prove the athlete was at least negligent, and there are a host of other factual determinations that may need to be made by the hearing panel in relation to a whereabouts failure. These determinations will often need to consider the athlete’s credibility and character. If the proposed Comment is

strictly limited to fault analysis after the violation and the eligibility for a reduction has been determined, then the Comment could be helpful.

Issue: "The importance and rationale of whereabouts requirements, which must be specified in the Code, since Code Article 2.4 cases are wrongly perceived as a 'paper violation.'"

Recommendation: It would be helpful if to clarify the importance and rationale of whereabouts requirements in the Code. Whereabouts violations encountered by USADA are often due to filing oversights by athletes and not due to athletes nefariously avoiding testing.

#### **NADA India**

NADA India, NADO (India)  
NADO - NADO

SUBMITTED

-Introduce a progressive weight system for whereabouts failures, acknowledging the increasing severity with each violation.

-Establish comprehensive guidelines to dismiss irrelevant elements like an athlete's character or doping history when determining sanctions.

-Develop educational programs to emphasize the critical role of whereabouts requirements in maintaining a fair and effective anti-doping program.

#### **Drug Free Sport New Zealand**

Nick Paterson, Chief Executive (New Zealand)  
NADO - NADO

SUBMITTED

#### **Enrolment vs., completion of treatment programme**

**We support the concept** that the athlete can satisfy the substance of abuse treatment programme requirement through enrolment into the programme, as opposed to completion of the programme, with the ability to reinstate the reduced sanction due to non-completion. We consider this to be a practical approach that we have seen work well operationally.

#### **Three to one month reduction in sanction**

**We partially support the concept.** We support leaving in place the potential reduction in sanction from three to one months upon the completion of a treatment programme for the **first** SoA violation only.

We consider that this encourages athletes to seek medical support for addictive substances frequently abused in society, and we see this as an opportunity for athletes to seek medical support for other issues that may result in the use of such substances.

See the comment below regarding the incentive to seek treatment for any subsequent violation.

#### **SoA and multiple violations**

We consider that the following approach should be taken to SoA multiple violations:

- If the athlete completes a treatment programme for both the first and the second SoA violations, the first two violations will not count towards multiple violations, but any subsequent violations will.

- If the athlete incurs a second violation and does not complete a treatment programme for that violation, that second violation will start counting towards multiple violations.

- WADA might also consider for a second violation that the sanction be 6 months, reduced to 3 months if a treatment programme is completed (enrolled).

This becomes the incentive for the athlete to access a treatment programme in place of the current availability of the reduction from a three month to one month sanction for a second violation.

For example:

- First SoA violation – three months, or reduce to one month with treatment programme – does not count towards multiple violations regardless of whether treatment programme is completed or not.

- Second SoA violation – starts counting toward multiple violations unless a treatment programme is completed.

- Third SoA violation – counts towards multiple violations (either first or second violation depending on the above situation).

We acknowledge that this approach may be overly complicated but consider that any approach should be focused on encouraging an athlete to access medical support given the premise of SoA is that they are frequently abused in society.

### **Introduction of temporal aspect to SoA instead of OOC use**

Clarity is required as to whether the concept intends to only give athletes the benefit of SoA reductions if they can prove, for example, that use was at least three days prior to the start of competition, presumably to ensure a lower concentration in the athlete's system and therefore lessen any performance enhancing effect.

**We do not support this concept** because of the following concerns:

- The introduction of a pre-comp prohibited period, in addition to OOC and IC is a new concept which is likely to create confusion for athletes.

- This will significantly limit the application of SoA provisions, which were introduced to acknowledge the abuse of these substances outside of a sporting context.

- The evidential burden is difficult (e.g., if the presence concentrations were high, would that indicate use within the pre-competition period, which would effectively remove the application of SoA sanction reductions).

**KADA**

Shinhyeong jang, Legal / manager (Korea)  
NADO - NADO

SUBMITTED

Result management for whereabouts failure of athletes

### **A. Review of the weighting of each default**

#### **i The weighting given to each default is insignificant for whereabouts failure**

- With regard to individual whereabouts failure, determining sanctions by applying different weights is deemed to be a discussion related to the assessment of 'fault reduction' that can be considered in the period of qualification suspension by evaluating individual fault regarding individual failure rather than it is in the perspective of judging illegality.

- Of course, the degree of the illegality of the second and third failures will be greater than that of the first, but since there is no change in the fact that three failures are combined to constitute one violation, it will not be meaningful to assign different weights to the judgment of illegality.

## **B. Opinions on the amendment**

### **ı Each failure must be a criterion for determining the degree of fault.**

- It is possible to consider assigning different weights to determine the degree of fault, that is, the degree of violation of the athlete's duty of care regarding the third failure. Logically, it is reasonable to acknowledge greater fault for the second than the first or third failure than the second, rather than seeing the magnitude of fault for each failure as equal.

- As in the CAS case presented by an expert, a high degree of caution is required in the third failure. When the athlete fails to comply for the third time, as the result-management measures taken at this stage, it would be advisable if it is determined that the athlete has violated the location information rule (Article 2.4.) and as for the level of sanctions in this regard, the athlete's significant fault should be acknowledged, and it should be reasonable to impose a basic sanction of two years. In relation to the second discussion, estimating sanctions for failure from 'two years' is desirable as it clearly states that the reduction will not be possible when it is based on intent or significant fault.

### **ı Evaluate each failure's degree of fault and improve to reduce sanction if it is recognized that there is no significant fault.**

- With regard to how the standard for reduction can be applied if the degree of fault for the three whereabouts failures is evaluated differently, it is possible to indicate the explanation in the annotation regarding this as it is judged that a discriminatory reduction of up to one year may be possible when it can be recognized that the athlete did not commit at least significant fault exceptionally in the case of all three failures.

## **Finnish Center for Integrity in Sports (FINCIS)**

Petteri Lindblom, Legal Director (Finland)  
NADO - NADO

SUBMITTED

**More detailed specification of how to establish/evaluate athlete's degree of fault related to Art 2.4 (and even earlier in the process related to individual whereabouts failures) would be needed. This is as we are the opinion that current Code/standards doesn't give enough of "instructions" to ADOs to implement whereabouts failures and possible following ineligibility periods globally harmonized and equal way.**

**We don't support the idea of automatic progressive weight given to second and third whereabouts failures. This is as the nature of and reasons for failures can vary a lot and the order of failure doesn't automatically tell anything about the circumstances/severity of the failure. And further, what would be the impact such weighting to ineligibility as 2.4 requires 3 whereabouts failures in every case anyway. Also, if the first failure expires and the second failure then becomes a first failure, what would happen to weighting.**

**More clarity is supported, but we are the opinion that the entire period of ineligibility should be re-evaluated taking into consideration the nature of the whereabouts violations and principle of proportionality – two years sanction as a starting point seems too long, we would suggest considering one year ineligibility as a starting point and clear criteria to possible factors/circumstances to reduction to 6 months. Also, four whereabouts failures, instead of three, within 12 months commencing art. 2.4 violation would be worth considering. We suggest this as in our opinion most failures have nothing to do with athletes trying to avoid no-notice out-of-competition testing. And further, if ADO has reason to suspect that athlete is intentionally avoiding being tested ADOs should find evidence and use Art 2.3 and/or intensify such athletes testing in order to clarify the nature of circumstances.**

**Also, elements (examples of elements) which ARE relevant for determining the length of the sanction would need be specified/clarified (see comment related to degree of fault).**



The importance and rationale of whereabouts requirements, which must be specified in the Code **is very important as No Advance Notice Out-of Competition Testing is at the core of effective Doping Control and without accurate information as to an Athlete's whereabouts, such Testing will be inefficient and often impossible.**

### UK Anti-Doping

SUBMITTED

UKAD Stakeholder Comments, Stakeholder Comments (United Kingdom)  
NADO - NADO

It is unclear how *weighting* would work in practice. The concept paper does not provide sufficient detail as to what is proposed; would the weighting be material to the evidential burden on ADOs to prove first, second and third failures, or would it be material to sanction? If the suggestion is that the weighting could be relevant to the evidential burden to be discharged by ADOs, then this may be helpful. Plainly credibility and propensity (i.e. bad character) are relevant legal and evidential concepts that should be taken into account when evidentially dealing with later whereabouts failures.

We consider it is clear that the *starting point* for sanctioning a whereabouts failure is two (2) years but to the extent that it is not, further clarity is welcomed. Likewise, with regards to irrelevant elements for determining sanction, any further clarity is welcomed. Stressing the importance and rationale of whereabouts requirements would also be appreciated.

### Anti-Doping Norway

SUBMITTED

Martin Holmlund Lauesen, Director - International Relations and Medical (Norge)  
NADO - NADO

We believe each Whereabouts Failure should be given the same weight. This because the circumstances related to each Failure can be very different and it will be very difficult to assess which weight each one should have. For example, the third Failure may be more excusable than the first and second.

We think the Code is clear that the period of ineligibility must start on two years, and then possibly reduced if the athlete can establish circumstances to mitigate their fault.

We welcome a specification that certain elements are irrelevant for determining the whereabouts sanctions in a comment.

We welcome a specification of the importance and rationale of whereabouts requirements. Both to emphasize the seriousness vis-à-vis the athletes (that it is not a paper violation) and to emphasize the rationale vis-à-vis ADOs, to emphasize that the intention is to locate athletes in order to conduct OOC-testing and that failures should be understood in that light.

### CHINA

SUBMITTED

Yao Cheng, Result Management (China)  
NADO - NADO

#### Comment 1: More explicit guidance is needed to give weights to whereabouts failures

We support the results management procedures for cases of whereabouts failures, as specified in the International Standard for Results Management. Legal causation is an intricate issue, so it is not easy to give weight to each whereabouts failure. Therefore, we anticipate that WADA will offer explicit guidance or examples on this matter.

## Comment 2: Other “paper violations”

Violations of Code Article 2.5 are not uncommon. Comparatively speaking, violations of Article 2.10 (Prohibited Association) and Article 2.11 (Discourage or Retaliate Against Reporting) are more likely to be “paper violations”.

### Japan Anti Doping Agency

YUICHI NONOMURA, Result Management (??)

NADO - NADO

SUBMITTED

Whereabouts submissions and updates are for sure some burdern to RTP/TP/Other Pool Athletes. Even if you understood the importance of Whereabouts, it is still hard work for every athlete who respect the rules and the value of sport (who is not done/plan intentional doping) ensure their whereabouts information are completely sufficient, 24hr/7days/week. However, it is the necessary application to ensure the level playing field. We need to ensure Whereabouts submission does actually give a positive impression/buy-in from Athletes and ASPs and their true commitment to clean sport. Proposed points: #1 - Cautious of "weight to be given". Whereabouts Failure is to be asserted with three times MT/FF committed within 12months period, and it is true that RTP athletes suddently 'wake up' when they know they have 2nd WF, compared to 1st one. In terms of changing athletes' behaviour, Education must be mandatory for 2nd MT/FF committed rather than considering "weight", in order to avoid varied perception (already negative by some athletes) that could be raised. #2 - It is important to avoid differences among ADOs about identifying "fault". #3 - Subjective elements (eg. good character) must NOT be considered for determining sanctions. What "irrelevant" when determining sanctions must be consistent for any of ADRVs (2.1-2.11).

#4 - Agree to avoid the perception as a "paper violation" by giving clarify and rationale. We suggest to highlight the imporatnce of why we need 4 elements (need to revisit IST too) as well: 60min timeslot, Overnight accommodation, Competition information and Regular activities. Athletes are asking the below questions and it would be useful to provide the rationale to answer those to provide the legitimacy of Whereabouts submissions and updates (below are the examples of athletes' voice we received, hence if we ensure a rationale to be specified, it is necessary to answer those questions/comments):- Why 60min timeslot is necessary if OOC is conducted outside of 60min timesot (or outside of 60min becomes a norm)?- If we submit regular activities and those information are not corrent when DCO tried to find me, we may face Filing Failure. That means, it would be better not to submit regular activities.- It is very difficult to submit regular activities, where to start, where to finish (like roadracing, marathon, surfing, skiing).- If regular activities are deviated from regular at one time, we do not need to change that. Do we still face Filing Failure although we can establish that was one time only becuase of (for example) changing schedule at the last minute.- Until the last minute, the team (managers or coach) does not give me information about accommodation (some times IFs do not identify the hotels etc), so very difficult to update whereabouts for competition information.

Another proposed points: ADOs are trying very hard to ensure athletes submit whereabouts information and update. Some clarifications of athletes' requirements are necessary, particularly Regular activities and Competition schedule.

### RUSADA

Kristina Coburn, Compliance Manager (Russia)

NADO - NADO

SUBMITTED

RUSADA proposes that each whereabouts failure be given equal weight and that each failure be evaluated depending on its circumstances.

RUSADA also suggests to clarify the circumstances that must be established by athletes to mitigate their fault, taking into account the definition of 'Fault' in the Code (are the same circumstances as described in the Code definition or must other circumstances be considered in whereabouts cases). It might be helpful to consider including the definition of the 'Negligence' to the Code (taking into account that whereabouts failures can only be a negligent).

It might be useful to clarify that certain elements are irrelevant for assessing the whereabouts sanction by adding the relevant comments.

RUSADA agrees with the last concept.

### Swiss Sport Integrity

Ernst König, CEO (Switzerland)

NADO - NADO

SUBMITTED

Issue: "Sanctions in Whereabouts cases - The weight to be given to each whereabouts failure."

Rigour in Whereabouts requirements must be maintained in order to reinforce the value of testing. Since the 12-month window is in constant motion and violations come and go, they should all be of equal weight. Care must be taken, and a Comment could clarify that the fault is to be assessed across all three failures with the expectation that the athlete would be on heightened alert after the first and second failures.

Issue: "The need for more clarity regarding the fact that the period of ineligibility must start at two years and then, can only be reduced to a minimum of one year if athletes can establish circumstances to mitigate their fault."

Swiss Sport Integrity agrees. More clarity on this would be helpful. In any case where a range based on fault exists, the athlete always presents circumstances that they argue demonstrate a mitigated fault level.

Issue: "The need to specify, through a comment or definition, that certain elements are irrelevant for determining whereabouts sanctions (e.g., no doping history, good character, credibility)."

It is not clear that the statement above is accurate. Art. 10.3.2 states that a fault reduction below two years is not available to an athlete "where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing." If there are arguments on this issue, the arbitrator will rightfully consider character and credibility of the athlete. Additionally, whereabouts failures themselves require an ADO to prove the athlete was at least negligent, and there are a host of other factual determinations that may need to be made by the hearing panel in relation to a whereabouts failure. These determinations will often need to consider the athlete's credibility and character. If the proposed Comment is strictly limited to fault analysis after the violation and the eligibility for a reduction has been determined, then the Comment could be helpful.

Issue: "The importance and rationale of whereabouts requirements, which must be specified in the Code, since Code Article 2.4 cases are wrongly perceived as a "paper violation"."

Swiss Sport Integrity agrees. It would be helpful if to clarify the importance and rationale of whereabouts requirements in the Code.

Additional topic to consider:

Art. 2.4 should also be applicable to other Whereabouts Pools than the RTP (per Code Art. 5.5) to enable ADOs to establish more granular (and hence athlete-friendly) Whereabouts requirements based on the athlete's level.

### Dopingautoriteit

Robert Ficker, Compliance Officer (Netherlands)

NADO - NADO

SUBMITTED

#### 8.2. Relevant provision

Article 10.3.2. reads as follows:

*For violations of Article 2.4, the period of Ineligibility shall be two (2) years, subject to reduction down to a minimum of one (1) year, depending on the Athlete's degree of Fault. The flexibility between two (2) years and one (1) year of Ineligibility in this Article is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing.*

#### 8.3. Issue

Case law has brought to light certain issues relating to the determination of the applicable sanction for whereabouts rule violations.

#### 8.4. Recommendations:<sup>[1]</sup>

- Each whereabouts failure should be evaluated separately for the determination of the degree of fault. Having said that, Doping Authority supports the suggestion that more weight is given a second and a third whereabouts failure in terms of the degree of fault.<sup>[2]</sup> Our reasoning is the following: the degree of fault as mentioned in Code Article 2.4 pertains to the degree of fault for the whereabouts violation as a whole. In other words, the degree of fault is not about three isolated and separated whereabouts failures individually.

- Doping Authority supports that the period of ineligibility must start at 2 years, which can only be reduced to a minimum of one year if the athlete can establish circumstances to mitigate their fault. This approach, i.e. to start at the maximum sanction and then go down, should apply on *all* periods of ineligibility.

- Doping Authority Netherlands supports the need to specify in the Code that certain elements are irrelevant, and therefore cannot be taken into account, for determining whereabouts sanctions (e.g., no doping history, good character, credibility). Moreover, we recommend that this is clarified for *all* anti-doping rule violations.

- Doping Authority Netherlands supports the suggestion to specify the rationale and importance of the whereabouts requirements. This rationale is already present in the ISTI and we support including this in the Code.

<sup>[1]</sup> This list follows the list used by the Code Drafting Team at concept #2.

<sup>[2]</sup> Although there may be exceptions, e.g. clerical errors when submitting whereabouts filings, two filing failures in a period of 48 hours.

#### Anti Doping Danmark

Silje Rubæk, Legal Manager (Denmark)  
NADO - NADO

SUBMITTED

We support that each whereabouts failure should be given equal weight. This aims to foster fairness and equality in sanctions, and for the athletes to bear higher attention after receiving a first or second warning. Additionally, we view article 2.4. not as a paper violation, but an easy and simple way to keep up the importance of the whereabouts system.

Furthermore, we support the need to specify, through a comment or explicit definition, that certain elements are irrelevant for determining whereabouts sanctions. It should not be up to the hearing panel to use elements like no doping history, good character, credibility in whereabouts cases.

The system for whereabouts cases should be simple and easy to understand for both athletes and the hearing panel.

In the interest of clarity and accessibility, we support a straightforward and easily comprehensible system for whereabouts cases. This simplicity is essential to ensure that both athletes and hearing panels can navigate the process with ease and understanding.

#### Freelance journalist

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

Progressive weightage could be given. It could be started from two years and reduced to one year depending on the circumstances. A comment would be preferable to explain that history, character etc are not relevant. Yes, the impression about "paper violations" needs to be removed.

### Sports Tribunal New Zealand

SUBMITTED

Helen Gould, Registrar (New Zealand)  
Other - Other (ex. Media, University, etc.)

A previous blemish-free record or other mitigating factors should be relevant so we would not want to see specified definitions making certain elements irrelevant.

### International Testing Agency

SUBMITTED

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

- We agree to give a progressive weight to each of the Whereabouts Failures generally speaking.
- We agree to clarify that the starting point is 2 years and the burden of proof lays with the athlete to mitigate the sanction.
- Adding a comment to clarify that some aspects, such as no doping history, are irrelevant would be useful and would steer panels in the right direction. A specific definition of fault would also be helpful or at least a list of aspects to consider (1st year of inclusion; anti-doping education received; IT literacy, athlete tried to obtain help from ADOs, etc.)
- Adding a comment on the importance and rationale of the whereabouts requirements would also steer panels in the right direction.

## Concept #4 – Increase in Sanction Flexibility (37)

### Team USA Athletes' Commision

SUBMITTED

Meryl Fishler, Manger (United States)  
Sport - Athlete Representative (State the name of the athlete body in Organization name)

1. -Allows for athletes who have received a prospective TUE to be eligible for at a minimum a reprimand and at a maximum a two-year period of ineligibility
2. There should be no requirement for anti-doping organizations to announce reprimands publicly for no fault no negligence findings.
3. Allows for this flexibility for contaminated cases not covered by contaminated products

### Tug of War International Federation

SUBMITTED

Peter Dyer, Senior Vice President (England)  
Sport - IF – IOC-Recognized

I consider the current 2 year and 4 year sanctions to be too rigid. Again, I believe this should be risk assessed and be proportionate to the severity of the Offence and what advantage, if any, was gained by the athlete. In addition, there seems to be an issue that if any athlete admits the offense then the starting point is 4 years, and if they don't the starting point is 2 years. This is not encouraging the athlete to be honest. The reason for this is the huge difference between minority amateur sports and major professional sports, the difference in gaining the advantage as well as a resource behind the organisations and athletes.

If it is referred to WADA, in my experience, they provide an outcome or make a decision but provide no justification when challenged.

The Code or the supporting international standards do not recognise the significant difference between minority amateur sports and major professional sports, and while the same principles should apply, the level of sanctions, evidence (e.g. for ADRVs and TUEs) etc, etc should be based on a risk assessment and not a one size fits all strategy.

### **Union Cycliste Internationale**

SUBMITTED

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

The UCI fully supports the idea of having the same sanction reduction regime (between reprimand and 2 years) for "TUE cases" and contamination cases, irrespective of the nature of the substance.  
The idea of distinguishing the sanction for case of direct and indirect intent is worth exploring further.

### **World Rugby**

SUBMITTED

David Ho, Senior Manager Anti-Doping Operations (Ireland)  
Sport - IF – Summer Olympic

We would support the inclusion of therapeutic use exemption cases and contamination cases not covered by contaminated products as described in the proposal. For the other two suggestions, without a definition of direct or indirect intent, this is difficult to evaluate.

### **National Olympic Committee and Sports Confederation of Denmark**

SUBMITTED

Mikkel Bendix Bergmann, Legal Advisor (Denmark)  
Sport - National Olympic Committee

#### **Concept #4 – Increase in Sanction Flexibility**

The Danish NOC endorses the proposed revisions aimed at enhancing the flexibility of sanctions within the Anti-Doping Code, extending beyond specified substances and methods to include the suggested categories. It is crucial that sanctions remain adaptable, particularly in cases where athletes can establish no significant fault or negligence.

Our endorsement extends to TUE cases, where meeting the criteria for obtaining a TUE should be supported by flexible sanctions.

Furthermore, we advocate for the introduction of sanctions coupled with rehabilitation in cases with a social context where no attempts at enhancing performances are evident. We observe an increasing number of instances where a social element is evident, highlighting the necessity to provide assistance to these athletes rather than imposing strict sanctions. Naturally, any guidelines for such cases should be stringent and transparent to prevent potential exploitation.

Finally, we advocate for an increase in sanction flexibility in cases concerning young athletes. We urge the Drafting Team to explore the possibility of allowing young athletes, ineligible due to doping sanctions, the opportunity to engage in training during their period of ineligibility, or potentially have their suspension duration shortened. Certain conditions for this could be considered, for example if the young athlete give assistance in discovering or establishing code violations, particularly those involving support personnel or signatories. We do not support any considerations of increasing sanction lenience regarding support personnel or signatories. On the other hand, we endorse stricter sanctions concerning support personnel and signatories.

### **Botswana Football Association**

SUBMITTED

Boago Diphupu, Mr (Botswana)  
Sport - Other

Punishment and mechanisms are key.  
i agree with increase in Sanction Flexibility.

### **NZ Rugby**

SUBMITTED

Rebecca Giordano, Senior Legal Counsel - Regulations & Compliance (New Zealand)  
Sport - Other

We agree with, and support, each of the proposals to increase sanction flexibility.

## UEFA

SUBMITTED

Rebecca Lee, Anti-Doping Team Leader (Switzerland)  
Sport - Other

UEFA supports the development of this concept

UEFA agrees to the proposals made by WADA as they would ensure a fairer treatment of cases (see comment on concept #1) as well as the period of ineligibility thereof to be imposed.

## International Tennis Integrity Agency

SUBMITTED

Nicole Sapstead, Senior Director, Anti-Doping (United Kingdom)  
Sport - Other

The ITIA supports the first category. It seems reasonable that genuine therapeutic use cases should be treated more leniently than non-therapeutic use cases. The addition of therapeutic use cases to 10.6 could give rise to two risks: (1) the pre-TUE use of supra-therapeutic doses and (2) falsification of medical information in support of an unmeritorious TUE application. If possible, those risks should be mitigated (e.g. by demonstration that no supra-therapeutic dose was ingested and a written statement from the prescribing physician).

As regards the second category – the ITIA sees there is some logic to this however is are concerned that drafting should be such that it does not open up a new ream of spurious arguments about contamination which will be difficult to test scientifically e.g. due to there not being a product to have analysed; and may therefore lead panels to accept without credible, independent evidence.

## Sport NZ

SUBMITTED

Jane Mountfort, Principal Policy and Legal Advisor (New Zealand)  
Public Authorities - Government

This submission is made on behalf of Sport New Zealand, which is the Crown agency responsible for advising the New Zealand government on anti-doping policy and ensuring New Zealand's compliance with the International Convention against Doping in Sport 2005.

Sport NZ supports greater sanctioning flexibility for therapeutic use cases regardless of the prohibited method or substance and for other contamination cases.

Sport NZ considers that it may be reasonable to provide a reduced period of ineligibility for some but not all cases of indirect intent. We reserve our position until further details of a proposal are available.

## Council of Europe

SUBMITTED

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

## Supported

There is broad agreement with WADA's proposals to increase the flexibility for setting suspensions and not just for specified substance or methods. Various examples are provided by NADOs to underline the need for more

flexibility (degree of fault, retroactive TUE-cases, contamination cases).

### Anti-Doping Agency of Serbia

Bojan Vajagic, Director's Assistant (Serbia)  
NADO - NADO

SUBMITTED

**Anti-Doping Agency of Serbia supports extending the provisions of Code Article 10.6 to the TUE related cases and other contamination cases and allowing the imposition of a period of ineligibility ranging from a reprimand to two years depending on the athlete's degree of fault in these situations.**

### Organizacion Nacional Antidopaje de Uruguay

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

SUBMITTED

No comments. Approved 1st stage. Manage flexibility in both NADOs and Fis for the 2-year period and allow reductions

### Agence française de lutte contre le dopage

Adeline Molina, General Secretary Deputy (France)  
NADO - NADO

SUBMITTED

- Il est cohérent de prévoir une plus grande flexibilité dans la sanction lorsque le sportif satisfait les critères de délivrance de l'AUT, en particulier pour les sportifs de niveau national et de niveau international qui ne sont en principe pas éligibles à l'AUT rétroactive.

Plus largement, il serait opportun de permettre une plus grande flexibilité dans l'appréciation du degré de faute dans les cas d'usage thérapeutique avérés.

- Pas d'opposition de principe à permettre une plus grande flexibilité dans les cas de contamination qui ne sont pas couverts par le régime des produits contaminés, sous réserve toutefois d'exiger un niveau de preuve suffisant et des conditions strictes pour ne pas permettre aux panels de faire preuve d'indulgence sur de simples hypothèses et ne pas ouvrir de brèche au profit des tricheurs.

Le concept d'intention indirect doit être envisagé avec une grande prudence compte tenu de ces effets potentiels involontaires.

Le concept d'intention indirecte devrait être clairement défini en termes juridiques pour pouvoir être transposé dans les législations nationales. Il existe un risque d'affaiblissement du principe d'intention tel que défini à l'article 10.2.3, qui est pourtant très dissuasif, en prévoyant un régime dégradé de sanction.

### NADA

NADA Germany, National Anti Doping Organisation (Deutschland)  
NADO - NADO

SUBMITTED

For therapeutic use cases, regardless of the nature of the prohibited substance and/or prohibited method but subject to the satisfaction of the criteria for obtaining a TUE described in Article 4.2 of the International Standard for Therapeutic Use Exemptions.

Comment NADA: Partly Agree The average athlete on the expertise of physicians. Critical are cases where an athlete relies on such expertise, but does NOT satisfy the criteria for obtaining a TUE. The above describes cases should rather be subject to a Fairness TUE as they are only lacking a formal aspect. These cases should not be treated as a case to "catch those who cheat".

For contamination cases not covered by contaminated products.

Comment NADA: Agree? See above / indirect intent (e.g. ibuprofen)

The Code Drafting Team is seeking stakeholder feedback on the possibility of extending the provisions of Code Article 10.6 to the above-mentioned situations to allow the imposition of a period of ineligibility ranging from a reprimand to two years depending on the athlete's degree of fault. Furthermore, the Code Drafting Team is considering distinguishing the sanction for cases of direct and indirect intent under Code Article 10.2.3, whereby for cases of indirect intent, the applicable period of ineligibility could range from two to four years depending on the



### Anti-Doping Sweden

Jessica Wissman, Head of legal department (Sverige)  
NADO - NADO

SUBMITTED

ADSE fully supports the suggestion to extend the provisions of Code Article 10.6 to both mentioned situations to allow the imposition of a period of ineligibility ranging from a reprimand to two years depending on the athlete's degree of fault.

**For therapeutic use cases**, ADSE considers that current leading CAS case law on these cases are unproportionate, i.e., in cases where the athlete has medical reason to use prohibited substance and would satisfy the ISTUE 4.2 requirements but hasn't applied for a TUE in advance.

In the assessment of the degree of fault, the objective elements are considered but in these cases many athletes (uneducated in anti-doping) believes that a prescription from a doctor and a valid diagnosis is enough. These athletes fall within a sanction in the range 12-24 months, which in ADSE's opinion is way too harsh and not proportionate. Anti-Doping organizations and the sporting organizations don't have the resources to educate and inform all athletes which, as mentioned, has a direct and dramatic effect for the athletes.

### NADO Flanders

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

For the increase of flexibility, the principle is supported by NADOF:

- In general we support this, because having more flexibility allows more room to apply the principle of proportionality, which is considered in some legal tradition a general principle of law;

- for cases where the athlete would have had a TUE approved, but failed to apply for a TUE in a timely manner. In such cases, it would only be just to apply a lower sanction, even for non-specified substances.

For the specific case of a TUE, NADOF would like to ask that the balance between the possibility to obtain a retroactive TUE and a case where a TUE was only approved for the future, leading to the flexibility in sanctioning. When an AAF occurs, the ISTUE 4.1 criteria allow a retroactive TUE. Also, the fairness clause of article 4.3 does allow to have a retroactive TUE when the criteria of 4.1 are not met, but it would be unfair to deny the TUE.

If it can be established that an athlete only made the paper violation of not timely apply for a TUE, this could also be addressed through ISTUE 4.3, but this should by all means remain exceptional.

But still, denying a fairness TUE and reverting to for instance a reprimand because of the fact that the Athlete, if he timely applied for the TUE, the TUE would have been approved, comes very close to a case of fairness. Bearing in mind that even a reprimand is a sanction and can mean results are disqualified.

It should be considered to further elaborate on the fairness, to avoid that in some cases failing to apply retroactively is covered by a ISTUE 4.3 TUE, and in other cases there is a sanction but with added flexibility. So when drafting this flexibility provision, the link with the TUE retroactive criteria should be made clear.

### Anti-Doping Norway

Martin Holmlund Lauesen, Director - International Relations and Medical (Norge)  
NADO - NADO

SUBMITTED

We fully support the proposed changes.

## Canadian Centre for Ethics in Sport

Elizabeth Carson, Senior Manager, Canadian Anti-Doping Program (Canada)  
NADO - NADO

SUBMITTED

The CCES agrees with the addition of the two new categories, and with distinguishing the sanction for cases of direct or indirect intent under 10.2.3.

## ONAD Communauté française

Julien Magotteaux, juriste (Belgique)  
NADO - NADO

SUBMITTED

### 4) Increase in Sanction Flexibility:

In relation to the different questions asked for this concept:

- Ok to increase in sanction flexibility (in general) ;
- Ok to increase in sanction flexibility for therapeutic use cases, regardless of the nature of the prohibited substance, but subject to the satisfaction of the criteria for obtaining a TUE described in article 4.2 of the ISTUE;
- Ok to increase in sanction flexibility for contamination cases not covered by contaminated products;
- Ok to extend the provisions of Code Article 10.6 to the above-mentioned situations to allow the imposition of a period of ineligibility ranging from a reprimand to two years depending on the athlete's degree of fault;

In relation with Code article 10.2.3, ok to distinguish the regime of sanction whether there is direct or indirect intent. When there is indirect intent the regime of sanction should be more flexible and lower than there is a direct intent. In any case, 4 years seems too high in case of indirect intent.

## RUSADA

Kristina Coburn, Compliance Manager (Russia)  
NADO - NADO

SUBMITTED

RUSADA generally agrees with the 4th concept.

However, the meaning of the suggested TUE provision in this concept is unclear, given that the Code Article 4.4.1 establishes the absence of an anti-doping rule violation if it is consistent with the provisions of a TUE granted in accordance with the International Standard for Therapeutic Use Exemptions, and requires additional comments related to the situation that are going to be covered by this provision, who and how shall conclude whether a prohibited substance/method meets the criteria for obtaining TUE etc.

## Sport Integrity Australia

Chris Butler, Director, Anti-Doping Policy and International Engagement (Australia)  
NADO - NADO

SUBMITTED

**The Code Drafting Team is seeking stakeholder feedback on the possibility of extending the provisions of Code Article 10.6 to the above-mentioned situations to allow the imposition of a period of ineligibility ranging from a reprimand to two years depending on the athlete's degree of fault.**

We **support** the proposal to extend the provisions of Code Article 10.6, to the mentioned situations (involving TUEs and contamination), to allow the imposition of a period of ineligibility ranging from a reprimand to two years depending on the athlete's degree of fault:

We **agree** there should be avenues for people who have legitimate therapeutic uses who did not consider that their medications would provide a performance enhancing benefit.

We **agree in principle** that this proposal extend to contamination cases. However, it may be useful to provide guidance in a comment (or other materials) to explain the circumstances relating to 'contamination cases not covered by contaminated products'.

However, we also **encourage** the Drafting Team to consider if this proposal could be applied more broadly to cover other examples that may arise in the future and that should be included under this provision.

**Furthermore, the Code Drafting Team is considering distinguishing the sanction for cases of direct and indirect intent under Code Article 10.2.3, whereby for cases of indirect intent, the applicable period of ineligibility could range from two to four years depending on the circumstances of the case.**

We **agree** in principle that more explanation is required to distinguish the sanction for cases of direct and indirect intent under Code Article 10.2.3, whereby for cases of indirect intent, the applicable period of ineligibility could range from two to four years depending on the circumstances of the case. To clarify the operation of these provisions, it may be useful to include a definition or explanation of the meaning of 'direct' and 'indirect'. (See our comments in relation to Code Concept #1).

#### Drug Free Sport New Zealand

Nick Paterson, Chief Executive (New Zealand)  
NADO - NADO

SUBMITTED

#### Therapeutic use cases being available for no significant fault or negligence

We **support the concept**. We expect that evidence would require support from a TUE Committee confirming that the requirements of ISTUE Article 4.2 have been established.

#### Contamination cases not covered by Contaminated Products

Clarification required – we presume this is intended to capture raw foods etc., as opposed to products. If so, we **support the concept** that contamination cases should attract the same no significant fault / negligence options as contaminated products.

However this introduces new concepts or complications, and would a better and consistent approach not to expand “contaminated products” to include such cases?

#### Direct and indirect intent

No comment at this stage.

#### NADA India

NADA India, NADO (India)  
NADO - NADO

SUBMITTED

-Extend Code Article 10.6 provisions to therapeutic use cases, aligning with evolving medical practices.

-Implement a tiered system for sanction reduction based on the degree of athlete fault, with specific criteria for each circumstance.

-Define and distinguish between direct and indirect intent.

-Distinguish sanctions for direct and indirect intent, ensuring proportional penalties.

-Introduce advanced technology for more accurate fault assessments, and allocate resources for athlete education programs on the importance of strict adherence to anti-doping regulations.

## KADA

Shinhyeong jang, Legal / manager (Korea)  
NADO - NADO

SUBMITTED

### Increase in sanction flexibility

#### A. Regarding the reduction of sanctions if TUE (Therapeutic Use Exemption) requirements are met

ǀ Considering the current status of the domestic application of 'retroactive TUE,' the effectiveness of the improvement plan is low.

- The amendment is intended to expand the scope of use for therapeutic purposes from a reprimand to an exceptional reason for suspension of qualifications of less than one year, as it is deemed that the athlete has no significant fault or negligence if the conditions for exemption are met in the case of use for therapeutic purposes.

- Meanwhile, as the retroactive TUE application period and requirements are interpreted broadly in Korea and operated relatively flexibly in reality, it is not significantly required (the domestic TUE retroactive TUE application rate is approximately 20%, and application requirements are regulated as emergency, other exceptional reasons, and use of substances prohibited during the period outside of the period.)

- Therefore, if a prospective TUE application is unavoidable, it can be applied by applying at any time, even after notification of charges, and approved if the approval requirements are met. The need to regulate it as a requirement in the sanctions decision process is questionable.

- Additionally, athletes are guaranteed the procedural right to separately file a provisional hearing or appeal in response to TUE disapproval. If there is a TUE procedure or substantive problem, there is a way to seek relief during this process.

#### B. Reduction of sanctions for cases of contamination that do not fall under the category of contaminated products under the Code

ǀ 'Contaminated products' refer to products that contain prohibited substances that are not specified on the product label or cannot be found through a reasonable internet search.

ǀ The current Code stipulates that in order for an athlete to have sanctions reduced due to product contamination, the athlete must be able to identify the contaminated product that caused the abnormality in the analysis results (Article 10.6.1.2 of the Code).

ǀ Meanwhile, as expert opinion suggests, cases of contamination that are not included in contaminated products show very diverse aspects. Problems may arise due to the issue of who will bear the burden of proving new contaminated products in future regulations, the difficulty of individuals to actually prove contaminated products when the obligation is imposed on athletes, and the possibility that contaminated products recognized at the national level may be recognized globally in the future cannot be predicted.

ǀ In addition, there are cases where athletes may not be able to specifically identify the product that contains very low levels of diuretics and is known to cause abnormal analysis results when contaminated.

ǀ Therefore, there is a need to additionally study the threshold value of the decision criteria that must be clearly

reported as an abnormal analysis result in the reporting restrictions for prohibited substances in which contaminants are found (WADA technical letter- 24, etc.)

### C. Opinions on the amendment

o If there is no TUE approval, but a reason equivalent to Article 4.2 of ISTUE is recognized in the sanction decision process, it is judged **sufficient to consider it as a general fault reduction element under the normal regulations on fault reduction (Article 10.6.2.)**.

o It would be reasonable to raise the reporting limit for contaminants according to the laboratory technical documentation, or further subdivide the reporting standards arising from the ingestion of the laboratory's contaminated products, and determine this as the final origin due to contaminated food by judging the level of establishment of the origin by the athlete rather than expanding the grounds for reduction regarding violations related to contaminated products.

### Appeals and revision of decisions

#### A. The need for a national-level athlete reexamination process within the scope of the reexamination standards and protocols

**o The new re-examination process for national-level athletes hinders acceptance of the original decision.**

- If an international-level athlete is dissatisfied with a sanction decision, he or she can appeal through CAS, and the objection can be raised with the Swiss Federal Supreme Court, so there is an opportunity for subsequent reexamination. National-level athletes can also appeal against the decision of the sanctions committee if they are not satisfied and receive a new decision from the appellate body, and if there are serious procedural defects, they can seek relief from the domestic court.

- In normal cases, since the scope of review of an appeal is not limited according to Article 13.1.1 of the WADA Code, the athlete is given ample opportunity to claim new facts that were not previously claimed in the appeal trial. The new retrial procedure is considered to have low validity because it may hinder the speed and stability of doping disputes.

- In addition, the provisions on reconsideration concern post-review of sanctions decisions and, depending on their importance, should be discussed at the level of regulations rather than international standards

#### Finnish Center for Integrity in Sports (FINCIS)

Petteri Lindblom, Legal Director (Finland)  
NADO - NADO

SUBMITTED

For therapeutic use cases, regardless of the nature of the prohibited substance and/or prohibited method but subject to the satisfaction of the criteria for obtaining a TUE described in Article 4.2 of the International Standard for Therapeutic Use Exemptions.

- **This suggestion is highly supported as in some cases current system doesn't give enough flexibility - for example in cases where athlete has medical reason to use prohibited substance and would satisfy the ISTUE 4.2 requirements but hasn't applied TUE (or TUE has expired). Also process of retroactive TUE based on ISTUE Art 4.3 should be clarified/specified in more detail for example with regards to timeliness to WADA giving reasoned decisions (approvals/denials) after ADO's conditional approval in such cases.**

? For contamination cases not covered by contaminated products.

- **This is supported, but examples/specifications are needed.**

The Code Drafting Team is seeking stakeholder feedback on the possibility of extending the provisions of Code Article 10.6 to the above-mentioned situations to allow the imposition of a period of ineligibility ranging from a reprimand to two years depending on the athlete's degree of fault.

**This is highly supported.**

### **Sport Ireland**

Melissa Morgan, Anti-Doping Testing and Quality Manager (Ireland)  
NADO - NADO

SUBMITTED

WADA has outlined two additional categories of cases where a period of Ineligibility can be reduced based on no significant fault or negligence. It would seem that this proposal is appropriate in therapeutic use cases, regardless of the nature of the Prohibited Substance and/or Prohibited Method but subject to the satisfaction of the criteria for obtaining a TUE. However, clarity is needed with regard to the other category of cases, particular with respect to what is meant by contamination cases not involving contaminated products.

In general, the concept of flexibility with regard to sanctions is worth exploring further; however, it should be noted that increased flexibility generally creates a more complicated set of procedures which, in turn, increases the likelihood of confusion and misunderstanding on the part of the Athletes and inconsistent application by Anti-Doping Organisations.

### **UK Anti-Doping**

UKAD Stakeholder Comments, Stakeholder Comments (United Kingdom)  
NADO - NADO

SUBMITTED

We welcome the incorporation of a carve out for TUE cases under Code Article 10.6. The Code does not currently facilitate an adequate reduction in sanction in circumstances where an Athlete is appropriately using medication to treat a medical condition, absent a TUE. Noting also that not all Athletes are required to apply for a TUE in advance of competing, the sanctioning regime under the Code does little to recognise the inherent risk these Athletes face given they are required to apply for a TUE *after* they have returned an Adverse Analytical Finding.

In the event an Athlete can invoke both the TUE case category (new proposal) and the Specified substance category (already part of Article 10.6), what provision should be relied upon when seeking to reduce sanction? Many TUE cases involve the use of Specified substances. Consideration should be given to address this in any wording that is introduced for the new TUE category (e.g. by specifying that the TUE category applies only to those cases involving non-Specified substances subject to the criteria for obtaining a TUE described in Article 4.2 of the ISTUE).

We consider that the inclusion of a *contamination cases* category beyond contaminated products is not needed and will create more inconsistency. We consider that such explanations already adequately fall within the scope of Article 10.6.2. If such a provision were to be introduced then the Code would need to set out very clear and limited examples of its application to assist ADOs.

We do not support introducing a range of two (2) to four (4) years for cases of indirect intent for reasons already stated elsewhere in this submission, but more particularly because of the risk of more inconsistency arising across decisions.

### **USADA**

Allison Wagner, Director of Athlete and International Relations (USA)  
NADO - NADO

SUBMITTED

Issue: “For therapeutic use cases, regardless of the nature of the prohibited substance and/or prohibited method but subject to the satisfaction of the criteria for obtaining a TUE described in Article 4.2 of the International Standard for Therapeutic Use Exemptions.” Stated differently, whether an athlete who receives a prospective TUE (but not a retroactive TUE) for a non-specified substance should be subject to the one-year minimum period of ineligibility when WADA does not agree to a retroactive TUE under ISTUE 4.3. Such a result often results in a draconian and unfair sanction for the athlete.

Recommendation: Carve out an exception to the restriction of 10.6.2 (as was done with the addition of Article 10.6.1.3) to allow athletes who have received a prospective TUE to be eligible for at a minimum a reprimand and at a maximum a two-year period of ineligibility.

Issue: Increasing sanction flexibility “[f]or contamination cases not covered by contaminated products.”

Recommendation: In theory it is difficult to determine how a contaminated non-product would not result in a no fault finding (e.g., contaminated meat, prescription medication, water). But assuming there are legitimate reasons for non-products not falling within no fault, then this flexibility would be helpful.

Issue: “Distinguish[] the sanction for cases of direct and indirect intent under Code Article 10.2.3, whereby for cases of indirect intent, the applicable period of ineligibility could range from two to four years depending on the circumstances of the case.”

Recommendation: Cases of indirect intent are exceedingly rare in USADA’s experience (whether by fact or by difficulty in proof), but the additional flexibility would be helpful.

## CHINADA

Yao Cheng, Result Management (China)  
NADO - NADO

SUBMITTED

### Comment 1: Same sanctions for the same ADRVs

As stated in the Code, ensuring fairness of sanctions is crucial, and sanctions imposed for the same ADRVs should be consistently applied across different cases. However, Article 10.3.4 (for violations of Article 2.9 “Complicity”) and Article 10.3.6 (for violations of Article 2.11 “Discouraging or Retaliating Against Reporting”) impose an overly broad period of ineligibility ranging from a minimum of two (2) years up to lifetime ineligibility, which grants too much flexibility and discretion to ADOs. This may lead to inconsistent application of sanctions in practice, detrimental to maintaining fairness in sanctions. Therefore, it is suggested that WADA establish regulations or publish guidelines specifically addressing such sanctions with levels and scopes accurately defined.

### Comment 2: sanctions of environment contamination Cases

#### (1) Conflict between doping analysis and environment contamination cases

We believe that the prevailing issue currently posing serious challenges to stakeholders, especially the athlete community and ADOs, is the positive cases resulting from environment contamination. Firstly, environment contamination is a pervasive problem existing across different countries and regions. Secondly, the number of prohibited substances leading to contamination is constantly on the rise. Take meat contamination as an example. From the cases disclosed by the ADOs and the decisions by the Court of Arbitration for Sport (CAS), the anabolic agents that may cause contamination include Nandrolone, Clostebol, Clenbuterol and Metandienone metabolites. Thirdly, the detection sensitivity of laboratories is constantly improving. In many cases of environment contamination encountered by CHINADA, the estimated concentration of prohibited substances in urine samples is less than 0.1ng/mL, far below the Minimum Required Performance Level (MRPL) established by WADA. Fourth, differences in testing methods and varying instrument sensitivity used by different WADA-accredited laboratories may result in conflicting results, with some laboratories reporting positive results while others reporting negative. Fifth, investigations into cases of environment contamination pose considerable challenges, particularly in source tracing. Due to the absence of direct evidence, athletes face significant challenges when attempting to demonstrate

that they bear no fault or negligence, or that their ADRVs were not intentional.

## **(2) Unnecessary cost of resources on environment contamination cases**

The increasing number of environment contamination cases is closely linked with the enhanced laboratory instrument sensitivity. Analytical laboratories have to allocate substantial resources on confirmation, ADOs have to expend considerable resources on results management, and athletes strive to establish that it is the environment contamination that causes their AAFs, which often turns out to be a task challenging but unlikely to succeed in many cases. Consequently, this not only imposes heavy burdens on stakeholders, but also results in a large number of unfair resolutions.

## **(3) An independent and open Environmental Risk List is needed**

During the formulation of the 2021 Code, many stakeholders argued that it would be unfair in many cases to require athletes to establish how prohibited substances entered their bodies based on No Fault or Negligence. In response, WADA clarified that the definitions of the terms “No Fault or Negligence” and “No Significant Fault or Negligence” would remain unchanged, but instead they would issue a technical document to raise the reporting limits for specified substances (which could include ingredients found in contaminated products). However, subsequent WADA notices to stakeholders addressing environment contamination only involved Clenbuterol and 6 types of diuretics, far less than the prohibited substances that are more likely to cause environment contamination, particularly anabolic agents.

We suggest that WADA strengthen its research on environment contamination, and establish an independent and open Environmental Risk List (ER List) which shall be regularly updated based on the contaminants detected in real-world settings. In addition, it's suggested that WADA determine the minimum reporting levels (MRL) for certain prohibited substances. When determining the MRL, it is crucial to consider the differences in detection levels among WADA-accredited laboratories. It is inappropriate to set the lower level too low according to a few laboratories with lower detection levels; otherwise a heavy burden would be imposed on other laboratories, ADOs and athletes.

## **(4) Liability determination for environment contamination of “non-product”**

The comment to Code Article 10.6.1.2 refers to liability arising from environment contamination from a “non-product”. “Where an Adverse Analytical Finding results from environment contamination of a “non-product” such as tap water or lake water in circumstances where no reasonable person would expect any risk of an ADRV, typically there would be No Fault or Negligence under Article 10.5”. Obviously, this comment defines the unavoidable risk of environment contamination as “No Fault or Negligence”. However, in practice, whether it was a positive case for Clenbuterol caused by meat contamination before 2019 or other positive cases caused by environment contamination in recent years, many ADOs choose not to charge athletes with ADRVs or bring forward their AAFs as ADRVs against these athletes. This practice has been recognized by WADA and supported by CAS rulings.

According to WADA's interpretation, such environment contamination of “non-products” can be categorized as “no case to answer” and has been reflected in WADA's annual ADRVs report, but not in any way in the Code. Therefore, we suggest the comment to Article 10.6.1.2 be adjusted in conjunction with the practice of the ADOs and the description of the annual ADRVs report.

### **Japan Anti Doping Agency**

YUICHI NONOMURA, Result Management (??)

NADO - NADO

SUBMITTED

The balance between maintaining sanction flexibility and strict sanctioning is essential. Applications of "No significant fault or negligence" are, in the end, depended on the hearing panel's decision. Hence, the clearer what this means with evidence, the better from a justice and fairness perspective. Proposed points: #1 - The addition of "For therapeutic use cases, regardless of the nature of the prohibited substance and/or prohibited method but subject to the satisfaction of the criteria for obtaining a TUE described in Article 4.2 of the International Standard for Therapeutic Use Exemptions" is welcome because it is a compatible approach between protecting athletes' health and flexibility in sanctioning. This addition allows for flexible sanctions to be imposed on athletes who would have been granted a TUE if they had applied in advance (in cases that do not fall under retroactive TUE applications). #2 -



We are wary that some athletes tested positive (AAF) are jumped onto "contaminated products" clause and some try to establish with lawyers the AAF came from "contaminated products" (or meat). It would be useful (from practical perspective) to consider more clarify and emphasis on supplements use as their own risk and what does "high level of caution" means. Also, worth mentioning about the contaminated meat case.

### Swiss Sport Integrity

Ernst König, CEO (Switzerland)  
NADO - NADO

SUBMITTED

In general, Swiss Sport Integrity welcomes an increase in sanction flexibility.

Issue: "Increase in Sanction Flexibility - For therapeutic use cases, regardless of the nature of the prohibited substance and/or prohibited method but subject to the satisfaction of the criteria for obtaining a TUE described in Article 4.2 of the International Standard for Therapeutic Use Exemptions."

Swiss Sport Integrity agrees and welcomes such a possibility as we only recently had a similar case. The one-year minimum period of ineligibility for a medically used (but not covered by a TUE) non-specified substance is a draconian and unfair sanction for an athlete. Swiss Sport Integrity would recommend to carve out an exception to the restriction of Art. 10.6.2 or a new rule in Art. 10.6.1 for medically used substances without a TUE. Although, a diagnosis should be there before the use of the substance. It should allow athletes who have received a prospective TUE to be eligible for at a minimum a reprimand and at a maximum a two-year period of ineligibility.

Issue: "For contamination cases not covered by contaminated products."

In theory it is difficult to determine how a contaminated non-product would not result in a no fault finding (e.g., contaminated meat, prescription medication, water). But assuming there are legitimate reasons for non-products not falling within no fault, then this flexibility would be helpful.

### Dopingautoriteit

Robert Ficker, Compliance Officer (Netherlands)  
NADO - NADO

SUBMITTED

#### 9.2. Relevant provision

Article 10.6.

#### 9.3. Issue

Currently, circumstances in which a period of ineligibility can be reduced below one year (between a reprimand and two years) based on no significant fault or negligence are listed at Code Article 10.6 and are limited to specified substances/methods, contaminated products, as well as protected persons/recreational athletes. WADA's Concept Paper for the Code sets forth two proposals regarding the addition of the two following categories:

- For therapeutic use cases, regardless of the nature of the prohibited substance and/or prohibited method but subject to the satisfaction of the criteria for obtaining a TUE described in Article 4.2 of the International Standard for Therapeutic Use Exemptions.
- For contamination cases not covered by contaminated products.

#### 9.4. Recommendations:[\[1\]](#)

-Doping Authority understands the proposals above as being applicable to:

(1) an AAF relating to an RTP athlete who did not apply for the TUE on time (i.e. prior to the use of the prohibited substance), or

(2) an AAF relating to an athlete who is not included in a RTP where there is no possibility to apply for a retroactive TUE. If this understanding is correct, than Doping Authority supports this proposal because in cases where all the TUE requirements are met the violation is only about not applying for TUE in a timely matter. However, it is then

important to ensure that (a) the regular application and TUE process is followed and (b) the TUEC is not aware of the pending violation when reviewing the application. Otherwise there may be some undue influence to grant the TUE or not.

-As for the proposal regarding contamination cases, Doping Authority does not understand from the concept paper which possible 'contamination situations' are envisioned here.

[1] This list follows the list used by the Code Drafting Team at concept #2.

### Anti Doping Danmark

Silje Rubæk, Legal Manager (Danmark)  
NADO - NADO

SUBMITTED

We agree with the proposed revisions aiming to increase the flexibility in sanctions, and adding the two suggested categories, so the flexibility not only applies for specified substances and methods. It is important that the sanctions are flexible when an athlete can establish no significant fault or negligence. We especially support this with TUE cases, where meeting the criteria for obtaining a TUE, is fulfilled.

In addition, we would like to open up for the possibility of sanctions with rehabilitation in cases with social context. We see an increasing number of cases, where there is a social element, why we find a need to help these athletes instead rather than just imposing a sanction. Of course the rules for such sanctions should be stringent and transparent to prevent potential exploitation.

### Freelance journalist

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

Therapeutic Use Exemption (TUE) cases are already covered by the existing clauses. If there is a realization that a drug was administered as part of an emergency exercise, then also there is a provision to seek a backdated TUE. Is there some more need to bring in another clause and further dilute the sanction? As it is, there is a regular quota of medical prescriptions and explanations about the athlete being unaware of the TUE process or else the doctor concerned having given a wrong medicine unsuitable for a competing athlete without realizing that he/she was a sportsperson. Further explanation may just add to the confusion. "Contaminated products" clause is often misused. Athletes are getting tested six or more supplements at the accredited lab to find out which one could have contained the banned substance. Invariably they fail to find the contaminated product. Too many clauses that end up with "depending on the circumstances of the case" may just lead to different interpretations and different sanctions defeating the very purpose of the rules that are framed to deliver uniform sanctions across sports and across the world. In one case last year in India, "contamination" was the key to an athlete receiving a reduction in the four-year suspension imposed by the disciplinary panel. The appeal panel made it one year. It so happened that the athlete could not produce a "contaminated package" of the product with a batch number nor did he have a bill for the purchase of the supplement which he took on the advice of his coach. There is a need to further elaborate on the "contaminated product" and/ or the clause dealing with "no significant fault or negligence".

### International Testing Agency

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

SUBMITTED

- We support a reduction regime "for therapeutic use cases". This could be used when R-TUEs are rejected and solves the issue of long sanctions for therapeutic use ADRVs due to the fact that the assessment does not square with a fault-based analysis. We also agree on using 4.2 as a pre-requirement.

- We believe that other cases of contamination are already properly covered by the No Fault Regime (10.5).
- We agree that in case of indirect intent, the range could be between 2 and 4 years.

**Charles University, Faculty of Law**

Jan Exner, Assistant Professor (Czech Republic)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

Based on my research, I welcome the idea of the drafting team to mitigate sanctions for indirect intent under the current Article 10.2.3 of the WADC 2021 to ineligibility ranging from two to four years while considering all circumstances. Nevertheless, I recommend further reconsidering the standard sanction to two years of ineligibility (see my comments on Concept #1). Moreover, I welcome the idea of extending Article 10.6 of the WADC 2021 to therapeutic use cases that satisfy the criteria for obtaining a therapeutic use exemption. The same goes for contamination cases not explicitly covered by contaminated products. I believe that both situations deserve a sanction ranging from a reprimand to two years depending on the athlete's degree of fault, instead of a sanction with the lower cap of one year. Such an extension would be suitable to punish such violations while better accommodating the requirement of proportionality.

**Imposing proportionate sanctions below the limits of the WADC (Article 10 of the WADC 2021)**

Following my research, I also recommend that the WADA introduce a provision in the WADC 2027 that would explicitly empower hearing panels to impose ineligibility below the fixed limits in exceptional cases to seek a proportionate punishment. The WADC 2021 limits the sanctioning flexibility of hearing panels by fixing the basic ineligibility and its range. It also provides an exhaustive list of options for its elimination, reduction, or suspension. Moreover, the WADC 2021 does not explicitly provide hearing panels with the discretion to impose ineligibility below its limits, even if the fixed sanction would be disproportionate. Nevertheless, there inevitably were, are and will be cases with extraordinary circumstances where the one-size-fits-all solution cannot work.

The current absence of a provision empowering hearing panels to impose ineligibility below the limits of WADC 2021 does not relieve them of their duty to seek proportionate punishments. When the fixed sanction framework of the WADC 2021 does not provide a proportionate ineligibility, hearing panels may patch the loophole with general legal principles, including proportionality. They should initially consider all objective criteria of the case and subjective criteria of the athlete or other person, including the level of anti-doping education. If they conclude that the fixed ineligibility would be disproportionate, they may impose the final sanction below the set limits.

Such sanctioning flexibility does not compromise the efficiency of the WADC, its purpose of harmonizing sanctions and ensuring equality for athletes and other persons, legal certainty, and other core anti-doping elements. Hearing panels may use such flexibility only in rare cases where the otherwise applicable sanction would be excessive and disproportionate. To reinforce the legal certainty, I nevertheless recommend introducing a provision in the WADC 2027 explicitly empowering hearing panels to impose ineligibility below the fixed limits to seek a proportionate punishment. As such, the WADA can specify the conditions and limits of such flexibility to make sure that the pursuit of proportionate ineligibility is in balance with other core anti-doping elements.

For details of the research, see Exner, J. (2020): *Fixed Sanction Frameworks in the World Anti-Doping Codes 2015 and 2021: Can Hearing Panels Go Below the Limits in the Pursuit of Proportionate Punishments?* *International Sports Law Journal*, pp. 126-144.

**Concept #5 – Results Management Agreements (38)**

**Team USA Athletes' Commission**

Meryl Fishler, Manger (United States)

Sport - Athlete Representative (State the name of the athlete body in Organization name)

SUBMITTED

1. We support this proposal- if this would mean an athlete originally would have had a six-year ban they would get a 4.5-year ban as most sanctions are 4 years or less

2. We disagree with this recommendation. Many athletes are unfamiliar with the WADA process as it can be confusing so forcing them to make a very important career and life-changing decision so quickly isn't in the best interest of the athlete.

### **Union Cycliste Internationale**

SUBMITTED

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

The UCI welcomes additional flexibility for inadvertent doping case but intentional doping shall be sanctioned severely.

The "one year reduction sanction" regime should be available until the notice of charge stage (i.e. after review of the rider's defense to be in a position to anticipate the applicable sanction).

The UCI supports the reintegration of the possibility to backdate the start of the period of ineligibility for "prompt admission", provided it is free-standing provision.

### **World Rugby**

SUBMITTED

David Ho, Senior Manager Anti-Doping Operations (Ireland)  
Sport - IF – Summer Olympic

We would agree with the proposal to extend the application of 10.8.1, as we agree that this has been a helpful clause. The 25% reduction would seem to be of benefit in many cases.

As per our ISRM comments, we agree that 10.8.1 could be made available from the pre-charge stage, but also consider that more flexibility/discretion should be given to ADOs to extend the period of applicability beyond the 20 days post-charge in exceptional circumstances.

With regards to 10.8.2 and the proposal for backdating of the start date of the period of ineligibility for prompt admission, we agree that this would provide flexibility and we would support the proposal provided that this is solely related to 10.8.2. We would not support backdating to the date of sample collection in any other circumstance.

We fully support the proposal to clarify 10.8.2 as it is not applicable in the vast majority of cases, yet must be mentioned to athletes as part of the RM process. This often leads to confusion for athletes and ADOs, particularly where the former do not have legal representation (and even in some cases when they do...).

We would also support increasing flexibility of the criteria for reduction of the period of ineligibility. One suggestion which may or may not fit here is something we have proposed in previous revisions - we would encourage consideration of a clause in the sanctioning process (perhaps similar to substantial assistance) which would incentivise/encourage athletes to help educate (and help others learn from their mistakes) by offering a suspension of part of their penalty at the results management stage. Few athletes testify on why/how they doped, because why would they when they've just been given, for example, a 3 or 4 year suspension and there may be no real chance of them achieving the threshold for substantial assistance?

In opposition to this type of idea it is often said that an athlete may just pretend or 'go through the motions' to benefit from a reduction and that may of course be the case, but if part of a suspension were suspended upon successful completion of a defined programme of education work, this would seem to be able to be managed. Regardless, it would seem a missed opportunity to identify risk (how the athlete initiated doping) and to provide deterrence to other athletes.

**Botswana Football Association**

SUBMITTED

Boago Diphupu, Mr (Botswana)  
Sport - Other

this one could help as an agreement would be reached.

**NZ Rugby**

SUBMITTED

Rebecca Giordano, Senior Legal Counsel - Regulations & Compliance (New Zealand)  
Sport - Other

We agree with, and support, all of the proposed amendments in relation to results management agreements.

**UEFA**

SUBMITTED

Rebecca Lee, Anti-Doping Team Leader (Switzerland)  
Sport - Other

UEFA partially supports the development of this concept

UEFA has no particular opinion on the first point. It would certainly ensure fast resolution but would be detrimental to investigations. How would this apply for specified substances and substances of abuse? Would the one-year reduction provided for a potential 4-year ban be ultimately reduced pro-rata for specified substance and substance of abuse (i.e. 1/4)? How would it apply for the other anti-doping rule violations (such as whereabouts providing for a maximum 2-year ban)?

For the second point, UEFA has no particular comment to submit.

With respect to the third point, UEFA finds that to ensure fast-track case resolution, incentive to admit the anti-doping rule violation shall be given from the very preliminary stages. However, experience suggest that athletes may only take full understanding of the consequences they face post-charge and thus only take advantage of the possibility to admit the anti-doping rule violation from this stage on.

We fully agree that case resolution agreements (Article 10.8.2) shall only apply in exceptional cases and that additional flexibility of the criteria for reduction shall be counted for. With respect to the possibility to backdate the start date of the period of ineligibility for prompt admission, UEFA has no particular comment.

**International Tennis Integrity Agency**

SUBMITTED

Nicole Sapstead, Senior Director, Anti-Doping (United Kingdom)  
Sport - Other

(i) Agreed on extending the scope of 10.8.1 to all violations (on a 25% reduction basis is supported. One risk is that athletes with few resources may feel pressured to accept that opportunity, even if they aren't at fault (and those that are better-resourced may only obtain legal advice at the notice of charge stage, by which time the opportunity has expired). But this would need to go cap in hand with no.2

(ii) Agreed

(iii) Agreed

If a player is going to admit the offence at pre-charge, and presumably save the trouble of a hearing, then a reduction seems reasonable. If a player only admits the offence after, essentially, being found guilty then they will have caused a lot of time/effort/money to be wasted and should not be offered a reduction so readily.

10.8.2 cases should be truly exceptional. We would suggest that in such cases WADA should be required to publish 10.8.2 cases (suitably anonymised), to give stakeholders confidence that they aren't being used inappropriately.

## Sport NZ

Jane Mountfort, Principal Policy and Legal Advisor (New Zealand)  
Public Authorities - Government

SUBMITTED

This submission is made on behalf of Sport New Zealand, which is the Crown agency responsible for advising the New Zealand government on anti-doping policy and ensuring New Zealand's compliance with the International Convention against Doping in Sport 2005.

Sport NZ supports extending the scope of Article 10.8.1 to all violations, and also providing for a 25% reduction rather than a one-year reduction to ensure proportionality across different violations.

Sport NZ does not support limiting the regime only to the pre-charge stage: athletes asked to make an admission at the pre-charge stage are in many jurisdictions not supported by legal assistance (unlike in New Zealand) so are unaware of their rights and are not well placed to assess the merits of the options.

Sport NZ supports maintaining the regime for the post-charge stage, but recognises that it may be appropriate to provide for progressively lesser reductions in sanction the later post-charge the admission is made.

On changes to article 10.8.2, Sport NZ is supportive of both proposals in principle. We consider that guidance would be necessary to assist ADOs in identifying exceptional circumstances to which the article applies, bearing in mind that for many ADOs, any violation is exceptional.

## Council of Europe

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

SUBMITTED

### **(partly) supported**

There is basically agreement that Art. 10.8.1 should be extended to all violations. In addition, there is support for the removal of the general one-year reduction in cases, where a confession without any further evidence or interview occurs.

It should be clearly emphasised that only unambiguous "early admission" should lead to a reduction under Art. 10.8.1.

Keep fair trial aspects into consideration and keep flexibility in the organization of the Results Management (and thus not impose this possibility in the first notification). This could therefore become an optional but not mandatory notification element (during the first notification).

Art. 10.8.2.: Some argue that the rule has so far proved impracticable (because WADA does not agree in order not to lose all procedural rights). In some cases, however, it is proposed that the standard be maintained (for exceptional circumstances).

Partly reference is made to the principle of the separation of powers, with Article 6 of the European Convention on Human Rights and the right to a fair trial, as well as with the recommendation of the Council of Europe of 2022 on general principles of fair procedure applicable to anti-doping proceedings in sport including the need for proportionate sanctions.

## Anti-Doping Agency of Serbia

Bojan Vajagic, Director's Assistant (Serbia)  
NADO - NADO

SUBMITTED

**Anti-Doping Agency of Serbia supports proposed changes to Results Management Agreements. We think that in practice these two changes to Code Article 10.8.1 would prove to be very good in particular:**

- 1. Extend its scope to all violations, including sanctions carrying less than a four-year ban and violations of the prohibition against participation during ineligibility described in Code Article 10.14.3.**
- 2. No longer provide for a one-year reduction of the asserted period of ineligibility, but a 25% reduction in the applicable sanction.**

**Organizacion Nacional Antidopaje de Uruguay**

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

SUBMITTED

No comments. Approved 1st stage. Manage flexibility in both NADOs and Fis for the 2-year period and allow reductions

**Agence française de lutte contre le dopage**

Adeline Molina, General Secretary Deputy (France)  
NADO - NADO

SUBMITTED

1. Il serait opportun d'étendre l'application de l'article 10.8.1 à toutes les violations, pour permettre de simplifier la résolution de toutes les affaires et pas seulement de celles dans lesquelles 4 ans de suspension sont encourus. En revanche, cette faculté ne devrait pas être ouverte pour les violations de l'article 10.14.3, sauf à méconnaître l'esprit de cet article selon lequel la période de suspension non respectée doit être intégralement purgée.

2. Il n'y a pas d'obstacle à la réduction de 25% de la durée de la sanction applicable.

3. Il n'est pas opportun de permettre la réduction pour aveu rapide uniquement avant la notification des griefs : d'une part, il est nécessaire de maintenir la phase contradictoire qui précède l'accusation et permet à la personne mise en cause de bénéficier des garanties propres au procès équitable. D'autre part, cette phase contradictoire permet de recueillir la défense de l'athlète et donc des explications sur son dopage, son entourage etc, ce qui est souhaitable au plan des investigations. Il est au contraire souhaitable de préciser - s'il en est besoin au regard de la rédaction de l'article 10.8.1 - que cette faculté n'est ouverte qu'au stade de la notification des griefs (charges). Enfin, cela participe à l'efficacité du dispositif: le sportif est d'autant plus enclin à avouer que ses premiers arguments ont échoué.

- Toute clarification de l'article 10.8.2 serait la bienvenue : ses contours sont en effet flous, de même que son caractère alternatif ou subsidiaire vis-à-vis des dispositions de droit commun.

- Le rétablissement d'une prise d'effet anticipée de la suspension pour aveux rapide serait trop clément : non seulement l'intéressé bénéficierait d'une réduction de 25% de la durée de la suspension, mais en plus, sa suspension pourrait débiter dès la date de la violation. Dans certains cas, la suspension deviendrait simplement symbolique, au seul motif que le sportif avoue rapidement. Contrairement à la rétroaction autorisée pour délai déraisonnable, cette rétroaction serait dépourvue de sens. En revanche, il serait pertinent de ne pas laisser la démonstration des retards non imputables au seul sportif, pour permettre aux OAD de les constater d'office.

**Anti-Doping Agency of Kenya**

Bildad Rogoncho, Head of Legal Services (Kenya)  
NADO - NADO

SUBMITTED

The time limit within which any person charged with an Anti-Doping Rule Violation is supposed to admit the charge and accept the consequences is too limiting. The Code should be reviewed to allow for such admissions to be admissible and acceptable at any time before a sanction is meted. This will give more room for any charged person to have more time to consider their various options regarding the consequences of their admission.

It is also prudent to open up the admissions to cases attracting less than a four-year period of ineligibility, with a percentage as a reduction criterion rather than the specific one year.

## Anti-Doping Sweden

SUBMITTED

Jessica Wissman, Head of legal department (Sverige)  
NADO - NADO

As to proposal 1) and 2) ADSE is positive to review an amendment of Code Article 10.8.1 and considers that it should be applicable to all violations.

ADSE does not support the suggestion to only make Code Article 10.8.1 available at the pre-charge stage. This contradicts the investigation and intelligence work and is, in most cases, not in the best interest for the athlete; they must be given sufficient time to be able to defend themselves in a fair way. If the Results Management Agreement is included the pre-charge stage it should not be mandatory.

ADSE supports proposal 3) to clarify that Code Article 10.8.2 (*Case Resolution Agreements*) only applies in exceptional cases. ADSE fully support the suggestion of re-integration, as a free-standing provision (i.e., that can be applied by Anti-Doping Organizations (ADOs) without the approval of WADA), the possibility to backdate the start date of the period of ineligibility for prompt admission. The current Article is not practical if WADA must agree with the reduction.

## NADA Austria

SUBMITTED

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

According to **Concept #5** we support the extension of the scope to all violations and the approach regarding the consequences. According to the sanctioning regime we would be more in favour to leave this possibility to both, pre-charge and charge stage. For the charge stage there should be no decrease in the period of ineligibility.

## NADA

SUBMITTED

NADA Germany, National Anti Doping Organisation (Deutschland)  
NADO - NADO

1. Extend its scope to all violations, including sanctions carrying less than a four-year ban and violations of the prohibition against participation during ineligibility described in Code Article 10.14.3.

Comment NADA: Agree? It seems unfair that an athlete who is facing e.g. a 2-year period of ineligibility should not be able to accept and cooperate and receive something in return.

2. No longer provide for a one-year reduction of the asserted period of ineligibility, but a 25% reduction in the applicable sanction.

Comment NADA: Agree? The reduction however should be bound to the condition to bring forward all facts surrounding the athlete's case and establish how the substance entered the body or at least bring forward evidence that to the satisfaction of the RMA leads to assumption the source of the substance is indeed unknown to the athlete (give and receive).

3. Make this sanctioning regime available only at the pre-charge stage, i.e., from the assertion letter described in Article 5 of the International Standard for Results Management (ISRM) and/or to provide a lesser reduction of the period of ineligibility where the admission occurs post-charge.

Comment NADA: Agree? It seems fair that an athlete who is open about his/her case and cooperative receive something in return. Athletes who see their hopes being swept away after maybe even a long exchange of positions should have their case being evaluated on their grounds and not be able to just accept and receive a reduction post-charge due to the fact that this may be the less bad alternative.

Moreover, the Code Drafting Team proposes to clarify that Code Article 10.8.2 (*Case Resolution Agreements*) only applies in exceptional cases. It is also considering removing or, alternatively, increasing the flexibility of the criteria for reduction of the period of ineligibility. In addition, it is suggested to re-integrate, as a free-standing provision (i.e., that can be applied by Anti-Doping Organizations (ADOs) without the approval of WADA), the possibility to backdate the start date of the period of ineligibility for prompt admission.

Comment NADA: Agree? Case resolution agreements are not practicable and should be removed? A more flexible approach might lead to more inconsistent in the sanction of cases and bear the possibility to be led to more appeals by WADA, if not approved beforehand – what WADA never does to not cut-off their right to appeal.



**NADO Flanders**

Jurgen Secember, Legal Adviser (België)

NADO - NADO

SUBMITTED

NADOF is not in favor of having 10.8.1 (only) applicable in the early notification stage, or to split the assertion from the actual charge.

If and ADO wants to incorporate 10.8.1 in the notification stage, this should be general information provided to the athlete. But from the perspective of an athlete, admitting and accepting consequences that are yet to be determined in the charge stage, might be odd. Again, if it involves specified substances for example, an athlete can be tempted to admit use of off label medication, and will be prone to a 4 year ineligibility period, whereas without admission the ADO would have to prove intent and can be limited to 2 years. This is not a concept that is illegal, but it should be applied with caution in order to have an informed admission by the athlete based on asserted consequences rather than a range of possible consequences, which is a moving target from the point of view of the athlete.

The concept can only work if there is an assertion of the maximum ineligibility sought, and the admission can result in a reduction.

**Japan Anti Doping Agency**

YUICHI NONOMURA, Result Management (??)

NADO - NADO

SUBMITTED

Even though "Results Management Agreements" has proven to be effective, we would be cautious to provide some perception that Athletes/other persons can receive lesser sanction if they just admit/agree, but not necessarily assisting for clean sport environment. Proposed second point ("No longer provided...25% reduction..") is more persuasive. Also agree on the "possibility to backdate the start date".

**ONAD Communauté française**

Julien Magotteaux, juriste (Belgique)

NADO - NADO

SUBMITTED

**5) Results Management agreements:**

In relation with Code Articles 10.8.1 and 10.8.2, these provisions must remain flexible. In particular, the comment on article 10.8.2 which also covers Code article 10.8.1 must remain unchanged, providing the possibility for ADO's to entrust the imposition of any sanction to a hearing body independent of the ADO. This is indeed perfectly in line with the principle of the separation of powers, with Article 6 of the European Convention on Human Rights and the right to a fair trial, as well as with the recommendation of the Council of Europe of 2022 on general principles of fair procedure applicable to anti-doping proceedings in sport.

Maintaining this flexibility should be the starting point for any possible revision of Code article 10.8.1 or 10.8.2.

In this context and without prejudice to the above, any reflection that may lead to more flexibility in the possible application of these two articles could be ok.

For examples:

- the possibility to extend the scope to all violations (not only these sanctioned by 4 years or more of ineligibility);
- providing a 25% reduction of the applicable sanction instead of a one-year reduction.

Consistent with our preliminary remark relating to the need to preserve the possibility for ADOs to maintain a clear separation between the control and investigation body, on the one hand, and that in charge of disciplinary follow up and sanctions, on the other hand, in a perspective of an effective right to a fair trial and in compliance with the principle of separation of powers, we are clearly not in favor of the possibility to extend the possible application of

articles 10.8.1 and 10.8.2 at the pre-charge stage (from the assertion letter). Indeed, this would de facto lead to removing the current possibility provided for by the Code and described above of clearly separating the control and investigation body, on the one hand, from that in charge of sanctions on the other hand.

Regarding the last proposal relating to this concept, without prejudice to our preliminary remark on it:

- we would agree to clarify, for example in a comment, that Code Article 10.8.2 only applies in exceptional cases;
- we would also agree to removing or, alternatively, increasing the flexibility of the criteria for reduction of the period of ineligibility. For example, when the jurisdiction of sanctions falls exclusively to an independent hearing body, the ADO cannot propose or accept a sanction reduction. So, it would be preferable to be more flexible and to remove the criterion «accept the asserted period of ineligibility» provided in article 10.8.1 and the criterion «accept the consequences» provided in article 10.8.2. Or, alternatively, to let this criteria but clarifying, for example in a comment, that this articles could also be applied or be taken into consideration by independent hearing bodies; and
- finally, consistent with the preceding observations and in a more flexible perspective, we are supportive that articles 10.8.1 and 10.8.2 should be free standing provisions (without approval of WADA) whether with regard to their possible application and/or the possibility of deciding to extend the start of the period of ineligibility to the date of violation of the anti-doping rules.

## RUSADA

Kristina Coburn, Compliance Manager (Russia)  
NADO - NADO

SUBMITTED

RUSADA agrees with all the content's proposals.

Furthermore, if Code article 10.8.2 remains in the revised edition of the Code, we suggest clarifying the exceptional cases (or circumstances) in which the terms of this article can apply, or it might be desirable to include the case resolution agreement definition in the Code or International Standard for Results Management.

## Sport Integrity Australia

Chris Butler, Director, Anti-Doping Policy and International Engagement (Australia)  
NADO - NADO

SUBMITTED

### **1. Extend its scope to all violations, including sanctions carrying less than a four-year ban and violations of the prohibition against participation during ineligibility described in Code Article 10.14.3.**

We have **no concerns** with extending the application to all violations as it is preferable to resolve any matter without the need for a hearing. We consider the addition of the Results Management Agreement has resulted in fewer hearings being sought by Athletes and it would be beneficial to extend this trend.

### **2. No longer provide for a one-year reduction of the asserted period of ineligibility, but a 25% reduction in the applicable sanction.**

We have **no strong objection** to introducing a 25% reduction. However, if the first proposal is not adopted, applying a one year reduction is preferable – more straight forward and simpler to apply. If this amendment is made, the drafting will also need to be clarified in Article 10.9 (multiple violations).

### **3. Make this sanctioning regime available only at the pre-charge stage, i.e., from the assertion letter described in Article 5 of the International Standard for Results Management (ISRM) and/or to provide a lesser reduction of the period of ineligibility where the admission occurs post-charge.**

We **don't agree** that the sanctioning regime should only be made available at the pre-charge stage. We support a

more flexible approach that is not fixed to a point in time, but instead allows a person to enliven the sanctioning regime at any time from notification through to post charge (but before the deadline for requesting a hearing). This approach still ensures the person is afforded the time necessary to make a fully informed decision and understand the case made against them.

If, in addition to making a timely admission, a person provides information about the circumstances giving rise to the violation (but without implicating a third party) this situation should be dealt with (including possible further reduction in sanction) through the Substantial Assistance provisions – which we suggest be expanded to include the receipt of a wide range of relevant information (see our response to Code Concept #6 and ISII Concept #4).

This approach seeks to encourage/incentivise the person to provide information that would assist or inform the anti-doping program of an ADO. For example, information could include details about motivations, source of the substance, how it was administered and used, and the benefits gained.

Any amendments to this regime must be carefully drafted and closely considered against the other provisions in the Code dealing with sanction reductions (such as Article 10.7: Substantial Assistance etc and Article 10.8.2) to ensure that they properly align, achieve the desired outcome, and do not create duplication, or confusion or lead to unintended consequences. When sanction reductions are being considered, it must be clear which provision/s of the Code applies. Any solution designed to increase flexibility must be balanced with the need to provide clear rules that are easily understood and applied.

For example, if a Person considers they are better off admitting the violation as soon as possible without providing any intelligence, because the reward to act is not commensurate or they do not properly understand the rules and the rewards, then the aim of the sanctioning regime is compromised.

**Moreover, the Code Drafting Team proposes to clarify that Code Article 10.8.2 (Case Resolution Agreements) only applies in exceptional cases. It is also considering removing or, alternatively, increasing the flexibility of the criteria for reduction of the period of ineligibility. In addition, it is suggested to re-integrate, as a free-standing provision (i.e., that can be applied by Anti-Doping Organizations (ADOs) without the approval of WADA), the possibility to backdate the start date of the period of ineligibility for prompt admission.**

We **support** clarification that Article 10.8.2 applies in exceptional circumstances (and that once enlivened, flexibility should be allowed).

We have **no concerns** with the proposal to backdate for prompt admission. However, for clarity 'prompt admission' should be explained/defined and as should the point to which backdating will occur.

#### Anti Doping Danmark

Silje Rubæk, Legal Manager (Danmark)  
NADO - NADO

SUBMITTED

In Denmark, the imposition of a period of Ineligibility is left entirely to our hearing body. Therefore, ADD don't have any experience with Result Management Agreements and don't have any major feedback of the proposed amending's to article 10.8.1.

Nevertheless, ADD support to extend the scope to all violations, and to then change the one-year reduction to a 25% reduction in the applicable sanction. This is to make the result management agreements mores effective.

#### NADA India

NADA India, NADO (India)  
NADO - NADO

SUBMITTED

-Extend the scope of Code Article 10.8.1 to cover all violations, regardless of the ban duration.

- Replace the one-year reduction with a percentage-based reduction, ensuring proportionality.
- Restrict the application of this mechanism to the pre-charge stage to maintain transparency.
- Include a provision for cases where admission occurs post-charge, with a reduced but still meaningful sanction.

## Drug Free Sport New Zealand

Nick Paterson, Chief Executive (New Zealand)  
NADO - NADO

SUBMITTED

### Apply admission sanction reduction to other violations

**We support the concept** as it encourages efficiency in the result management process and efficient use of anti-doping resources.

We suggest that the time period for admission is amended to be 20 days after notification, or 20 days following the receipt of the B sample analysis, where B sample analysis is requested pursuant to an Article 2.1 violation, to provide adequate time for admission (e.g., the matter may involve a contaminated product that the athlete requests a B sample analysis for but is then still willing to admit the violation). It would also provide the athlete time to engage legal support and not inadvertently miss this opportunity due to a lack of guidance.

### Reduce sanction by 25% rather than by one-year

**We support the concept** to introduce better proportionality should the concept also be applied to shorter sanction lengths (e.g., one year off a four year sanction is 25%, but one year off a two year sanction is 50%).

### Make reduction available at pre-charge stage only

**We do not support the concept.** We consider it good and diligent practice to have invested in proper investigation and reasoning behind any charge, and their full consideration having seen all the evidence, prior to requiring someone to admit to it.

### Case Resolution Agreements only in exceptional circumstances

The New Zealand result management regime, like some other jurisdictions, is that we have an independent Sports Tribunal determining sanctions. In our situation, the ADO may submit a joint memorandum on sanction, but the Sports Tribunal will ultimately make the determination meaning that Case Resolution Agreements are not entered into.

**We do not fully support the concept.** Internationally, we are comfortable with the use of Case Resolution Agreements so long as WADA oversight is retained to ensure consistent application. We consider that sanction periods should only be backdated to the start of a provisional suspension or the date of their documented admission of the violation, and anything outside of that requires WADA acceptance. We require further information to comment on the increased flexibility around criteria for the reduction in ineligibility.

## KADA

Shinhyeong jang, Legal / manager (Korea)  
NADO - NADO

SUBMITTED

Reduction in accordance with result management agreements

**o The purpose of the rule revision is to encourage 'prompt admission' of athletes.**

- The regulations that apply prompt admission are the presence, use, and possession of a prohibited substance in an athlete's sample where the 'intent' is recognized. Since the intent is considered for presence and use and possession of a prohibited substance is presumed based on the presence and use of a prohibited substance, the burden of proof is relatively imposed on the athlete compared to other violations. It may be easier for the athlete to receive reduced sanctions through prompt admission rather than proving that there was no intent, so this appears to be a provision to encourage this.

#### **o Opinions on the amendment**

**- It is necessary to introduce prompt admission only for violations that require intent.**

**• In addition to anti-doping rule violations (ADRV), which are premised on aggravated punishment, it is deemed that there is room to introduce prompt admission regarding violations that require intent, such as refusal of doping tests, evasion, and attempted administration.**

On the other hand, it is expected that there will be no significant benefit even if this prompt admission regulation is introduced for types of violations where there is a high possibility of dispute regarding the proof of violation. In particular, in cases where fault reduction is applied, the maximum reduction is larger for fault reduction, and thus, effectiveness may be problematic (up to 50%).

**- The timing of prompt admission needs to be moved forward to 'after notification of abnormal analytical finding'**

**• Regarding the timing of admission, since 'prompt admission' is premised on 'not contesting' the violation of regulations and the level of sanctions imposed, it is deemed harmless to admit after abnormal analysis results are notified, but it is deemed that it would be difficult to admit because the athlete does not know the specifics of rule violations, sanctions, rights, etc. only after the notification of abnormal analysis results are notified.**

**- For fairness in the result management process, the standard for the expedited period should be standardized to '20 days'.**

**• 'Prompt' is considered 20 days after notification of charges as it is the period for the athlete to submit a response. Extending this period is considered not advisable regarding effectiveness. Additionally, since the timing of hearings after the response deadline varies, extending it to a specific point may be problematic for fairness.**

Violation of regulations used throughout this material refers to ADRV.

#### **Review 'Short-term TUEs'**

**A. Introducing a "short-term TUE" approval system and preparing exception regulations is necessary.**

**o There is a conflict with the current WADA Code due to the introduction of the system**

- Regarding the 'time of approval,' a plan to introduce a 'short-term TUE approval system' as in ? and a plan to 'apply the time of approval retroactively' when deciding on a TUE can be considered. In the former case, particularly for athletes receiving treatment at upper-tier general hospitals, the need is fully understood as it takes a long time to submit medical records required for a TUE application because they cannot immediately receive treatment from their attending physician. However, it is contrary to the current ISTUE Article 4.2 d) (The reason for TUE application must not be due to a drug used without existing TUE approval), and there may be cases where the TUE applied for the same drug is disapproved after the first approval of the "short-term TUE," which means complementary measures, such as establishing exception regulations, must be taken together.

- Meanwhile, in the case of 'retroactive application from the time of approval,' if the final TUE is disapproved, the drugs taken during the TUE approval process may become problematic. There is still a possibility that drug use between the time of the TUE application and the decision date may be a violation. There are concerns regarding this uncertainty.

- In addition, it is common for athletes to apply for a TUE during treatment or to apply for a TUE after receiving a prescription. Even if a short-term TUE is introduced, there is a need to improve the process of informing about the prohibition of the use of the drug the athlete applied for at the time of TUE application. It is also worth considering specifying a prohibition on the use of drugs that have not been previously approved in the 'TUE application.'

### **Finnish Center for Integrity in Sports (FINCIS)**

Petteri Lindblom, Legal Director (Finland)  
NADO - NADO

SUBMITTED

Art. 10.8.1 should be extended to all violations. In addition, the removal of the general one-year reduction in cases and 25% discount instead, .It should be clearly emphasised that only unambiguous "early admission" should lead to a reduction under Art. 10.8.1.Keep fair trial aspects into consideration and keep flexibility in the organization of the Results Management (and thus not impose this possibility in the first notification). This could therefore become an optional but not mandatory notification element (during the first notification).

### **Sport Ireland**

Melissa Morgan, Anti-Doping Testing and Quality Manager (Ireland)  
NADO - NADO

SUBMITTED

WADA has outlined proposals for amending Article 10.8.1, including a proposal to extend its scope to all violations. Sport Ireland believes this would be appropriate, as there does not seem to be a reasonable basis to limit the possible reduction in the period of ineligibility just to cases involving a four-year ban. Likewise, with regard to the second proposal, this makes sense where the possibility of a reduction is being extended to cases involving bans shorter than four years.

With regard to the third proposal, as it would no longer be limited to 4-year period of Ineligibility, concerns arise in relation to whether sufficient information would be available at the pre-charge, in particular as the Anti-Doping Doping Organisation would not yet have charged the Athlete and asserted a particular period of Ineligibility.

Finally, the proposed re-integration as a free-standing provision of the possibility to backdate the start date of the period of ineligibility for prompt admission would be very welcome.

### **UK Anti-Doping**

UKAD Stakeholder Comments, Stakeholder Comments (United Kingdom)  
NADO - NADO

SUBMITTED

The current Article 10.8.1 provision works well. We would however, welcome the prospect of the provision being extended to other violations.

We appreciate the clarity with which the one (1) year reduction is expressed under the current Code. If this were to be amended to a 25% reduction, we would want there to be clarity as to what precisely is meant by the term "applicable sanction". Would this be the starting point i.e. two (2) years or four (4) years? Would it be clear that no other provisions capable of reducing the sanction under Article 10 would apply e.g. No Significant Fault? The certainty of the current provision should not be undermined with any widening of the provision.

We do not agree with making Article 10.8.1 available at pre-charge stage only. Providing Athletes with the opportunity to receive a one (1) year reduction post charge (as opposed to Notification) means that they have sufficient time to understand the process, what is alleged against them, what the Consequences will be, and the opportunity to seek legal representation and advice.

Bringing the availability of this provision forward, to pre-charge would have a detrimental effect on Athletes and ADOs alike. Fewer Athletes will have sufficient time to avail themselves of the one (1) year reduction and ADOs will end up expending more resources on cases going to hearings, because that will be the only remaining, realistic

option for most Athletes to reduce their sanction.

Bringing the availability of the provision forward may also put pressure on Athletes to do without representation and/or legal advice in order to secure the reduction in sanction within the prescribed time limit. This would be detrimental to the fairness of anti-doping proceedings.

We had not appreciated that under Article 10.8.2, Case Resolution Agreements are to be used in *exceptional* cases. Although WADA has adopted this position, this is not clear from the current iteration of the Code – clarifying this and what is capable of constituting such a case would be helpful. We consider however, that increasing the flexibility of the criteria to be applied, will result in more cases eligible to be resolved under Article 10.8.2, not fewer.

We also welcome the re-introduction of prompt admission, but would appreciate guidance as to how this provision would sit alongside Article 10.8.1 in particular, when admissions are received after more than twenty days after receipt of the charge. We would also wish to have clarity that prompt admission would only be applicable to cases by ADOs only (not panels) and is to be reserved for cases resolved without a hearing only.

## USADA

SUBMITTED

Allison Wagner, Director of Athlete and International Relations (USA)  
NADO - NADO

Issue: “Code Article 10.8.1 provides that an athlete or other person, after being notified of an asserted period of ineligibility of four or more years, may receive a one-year reduction in the period of ineligibility asserted, where they admit the anti-doping rule violation and accept the asserted period of ineligibility.”

Recommendation: This new provision is working very well. One concern is that athletes are able to sign a paper and walk away with a one-year reduction without engaging with the ADO. Additionally, it is unclear why the reduction only applies to violations with four-year periods of ineligibility, given the advantage/savings of not going to a hearing would apply to all cases. USADA, therefore, proposes the following:

- a. Add a requirement that upon the ADOs request the Athlete shall submit to an interview by the ADO and provide a truthful explanation of circumstances of the Athlete’s positive test (but no requirement to implicate others by name as that would fall under substantial assistance) to be eligible for the one-year reduction. It should be in the ADO’s discretion whether to accept the statement as true, and it may be cleaner to change it from a reduction to a suspension of a period of ineligibility should evidence come to light after the fact that the statements provided by the athlete or other person were not truthful.
- b. Change the one-year reduction language to 25%, and clarify that it applies to all anti-doping rule violations.

Issue: “Make this sanctioning regime available only at the pre-charge stage, i.e., from the assertion letter described in Article 5 of the International Standard for Results Management (ISRM) and/or to provide a lesser reduction of the period of ineligibility where the admission occurs post-charge.”

Recommendation: The most time and expense an ADO spends on a case is typically at the hearing phase. Thus, there is minimal benefit to requiring an athlete to agree to a sanction shortly after notice as opposed to shortly after charge. On the other hand, there is a significant detriment to athletes by shortening the deadline. Athletes have a number of things they are trying to figure out at the time of a notice: they have to determine whether and which legal counsel to engage; they have to figure out where and how they are going to live (provided they are provisionally suspended); they have to cope with what this means for their careers; and they potentially have to try and figure out what caused their positive test. To add to that list the requirement to make a quick decision on receiving a reduction to resolve their case is unnecessary and, as stated above, only minimally beneficial to an ADO.

Issue: The language in the Article states that “the *Athlete* or other *Person* may receive a one-year reduction . . . .” This language suggesting an ADO as flexibility whether to apply the rule is confirmed in the ISRM which refers to

an individual “potentially” benefiting from this provision. Yet the comment to Article 10.8.1 indicates the “*Athlete* may unilaterally reduce the period of *Ineligibility* to three (3) years . . .” suggesting that an ADO does not have discretion to apply the rule.

Recommendation: Clarify in the rule (not the comment) whether the application is optional. If the recommendation above regarding a mandatory interview is adopted, then the solution is self-evident because it will be in the ADO’s sole discretion whether to apply the reduction. But as the rule and comment reads now, there is ambiguity regarding whether the application of the rule is discretionary.

Issue: Case Resolution Agreements

Issue: “[T]he Code Drafting Team proposes to clarify that Code Article 10.8.2 (*Case Resolution Agreements*) only applies in exceptional cases. It is also considering removing or, alternatively, increasing the flexibility of the criteria for reduction of the period of ineligibility.”

Recommendation: USADA believes clarifying that 10.8.2 agreements only apply in exceptional circumstances would be helpful. USADA further believes increasing the flexibility upon which a reduction can be based on exceptional circumstances would be helpful.

Issue: “[I]t is suggested to re-integrate, as a free-standing provision (i.e., that can be applied by ADOs without the approval of WADA), the possibility to backdate the start date of the period of ineligibility for prompt admission.”

Recommendation: It would be helpful to bring the start date back under an ADOs authority but would also be good to leave as an option within a Case Resolution Agreement for exceptional cases.

Additional Recommendation related to Case Resolution Agreements: Subpart (b) of 10.8.2 indicates the ADO and WADA may agree to “the period of *Ineligibility* may start as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred.” In exceptional circumstances, the ADO and WADA may desire a later start date than otherwise applicable.

USADA recommends clarifying that the ADO and WADA may agree on a start date and that start date may be no earlier than the date of *Sample* collection or the date of another anti-doping rule violation. The relevant portion would read: “the period of *Ineligibility* may start on a date agreed upon by an *Anti-Doping Organization* and *WADA*, which may start as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred.”

### Anti-Doping Norway

SUBMITTED

Martin Holmlund Lauesen, Director - International Relations and Medical (Norge)  
NADO - NADO

1: We support the proposal to extend the scope of RM-agreements to all violations. It is strange that a reduction in the period of ineligibility should be given only in the most serious cases, furthermore, given that the rule is reserved for four-year bans, the implication of the “bottleneck” would be, that a ban longer than 3 years but shorter than 4 would be less feasible than charge with a clean 4-year ban, which seems inappropriate.

2: We support this proposal, required that there is a prompt admittance and acceptance of sanctions. We have also discussed whether there should be other requirements related to a possibility of a reduction, for example that the subject tells the ADO about the facts of his case by providing details about his doping regime and by doing so helps the ADO understand and maybe learn how to test smarter in the future. A 25% reduction / a 1-year reduction is too big without contributing at all.

3: We support this proposal in order to get a proper and fair profit related to the litigation costs.

### Canadian Centre for Ethics in Sport

SUBMITTED

Elizabeth Carson, Senior Manager, Canadian Anti-Doping Program (Canada)  
NADO - NADO



The CCES agrees that results management agreements should be available for all violations, with 25% reduction to the applicable sanction.

The CCES suggests having the option of a reduction for admission starting from the point of Notification, and for a specified number of days following a Notice of Charge, rather than limiting it only to the Notification phase. In the Notification phase, athletes may not be aware of what sanction is being proposed, and thus would not be fully aware of what they are agreeing to in a results management agreement.

The CCES agrees to re-adding the possibility to backdating the start of a period of ineligibility for a prompt admission. The CCES further notes that it should be made express in the Code that there is already an ability to backdate the start date due to delays not attributable to the athlete.

Case Resolution Agreements seem underutilized – it would be interesting for the ADO community to know how many there have been since their introduction. As they are similar to the Agreement on Consequences, why not simply use that process (rather than the Case Resolution Agreement, for which it is difficult to get WADA's acceptance), and WADA simply review the ones that are unsatisfactory.

## CHINADA

Yao Cheng, Result Management (China)  
NADO - NADO

SUBMITTED

### **Comment 1: Athlete who admits an ADRV can be given a shorter ineligibility**

Subject to Article 10.2.4, the period of ineligibility shall be four (4) years where the ADRV involves a specified substance or a specified method and the ADO can establish that the ADRV was intentional; otherwise, the athlete shall be subject to a two (2) year period of ineligibility. However, for many positive cases for specified substances, ADOs lack effective means to establish an athlete's intent other than his/her voluntary admission. Moreover, due to the higher burden of proof required by ADOs, even if an athlete is asserted to have committed an ADRV intentionally, the assertion is difficult to be upheld by the hearing panel. As a result, in a positive case for intentional use of a specified substance, if the athlete voluntarily admits the violation, he/she will be subject to a 4-year period of ineligibility (which can be reduced to 3 years upon entering into a results management agreement), or a 2-year period of ineligibility if the athlete refuses to admit the violation and the ADO cannot establish the intentional use of the specified substance. Admitting a violation carries a heavier sanction than not admitting it, which makes it unfair to athletes who are sincerely repentant. In this regard, it is suggested to amend Article 10.7.2 (Admission of an ADRV in the Absence of Other Evidence) or Article 10.8.1 (One-Year Reduction for Certain ADRVs Based on Early Admission and Acceptance of Sanction), so as to reduce the period of ineligibility to a greater extent for those athletes who admit to using specified substances.

### **Comment 2: We support the proposals raised by the Drafting Team**

Firstly, Article 10.8.1 (One-Year Reduction for Certain ADRVs Based on Early Admission and Acceptance of Sanction) currently applies only to athletes or other persons who are subject to a period of ineligibility of four (4) or more years. For an athlete or other person subject to a lifetime period of ineligibility who voluntarily admits the violation by entering into a results management agreement, there shall also be a reduced period of ineligibility to a certain extent in order to obtain cooperation from the individual concerned, thus reducing resources allocated to anti-doping activities and effectively achieving the objective of this Article.

Secondly, we support the proposals by the Code Drafting Team to extend the scope of Article 10.8.1 to sanctions carrying less than a four-year ban and to reduce the period of ineligibility to some extent if the athlete or other person admits violation at the pre-charge stage and enters into a result management agreement. However, it is important to note that the reduced period of ineligibility shall not be less than half of the otherwise applicable period of ineligibility.

## Anti-doping Bureau of Latvia

Mārtiņš Dimants, Director (Latvia)

NADO - NADO

SUBMITTED

LAT-NADO strongly endorses the extension of Code article 10.8.1. to encompass other Anti-Doping Rule Violations (ADRVs). The understanding is that this extension should specifically apply to violations warranting a standard 4-year sanction, excluding Code article 2.4.

At the ISRM working group, LAT-NADO advocated for the notion that Code article 10.8.1. could become applicable from the initial notification, while retaining the option to apply it at the charge stage. In light of this, LAT-NADO envisions a potential amendment to the Code, introducing a percentage-based reduction instead of a fixed one-year reduction. This would entail a progressive reduction based on the timing of acceptance, with suggestions such as a 25% reduction after the first notification, a 20% reduction at a later stage, and a 15% reduction if acceptance occurs only after the notice of charge. Comments and insights on how to formulate this percentage-based reduction in sanctions are welcomed and encouraged.

## Swiss Sport Integrity

Ernst König, CEO (Switzerland)

NADO - NADO

SUBMITTED

Issue: "Results Management Agreements - (1) Extend its scope to all violations, including sanctions carrying less than a four-year ban and violations of the prohibition against participation during ineligibility described in Code Article 10.14.3 and (2) no longer provide for a one-year reduction of the asserted period of ineligibility, but a 25% reduction in the applicable sanction."

Swiss Sport Integrity agrees and would welcome such possibility. It could be made by changing the one-year reduction language to 25%, and clarifying that it applies to all anti-doping rule violations including violations of the prohibition against participation during ineligibility.

Swiss Sport Integrity would also welcome a requirement that upon the ADOs request the Athlete shall submit to an interview by the ADO and provide a truthful explanation of circumstances of the Athlete's positive test (but no requirement to implicate others by name as that would fall under substantial assistance) to be eligible for the one-year reduction. It should be in the ADO's discretion whether to accept the statement as true, and it may be cleaner to change it from a reduction to a suspension of a period of ineligibility should evidence come to light after the fact that the statements provided by the athlete or other person were not truthful.

Issue: "(3) Make this sanctioning regime available only at the pre-charge stage, i.e., from the assertion letter described in Art. 5 ISRM and/or to provide a lesser reduction of the period of ineligibility where the admission occurs post-charge."

Swiss Sport Integrity agrees as it is already applying Art. 10.8.1 that (strict) way, at the notice-stage. Although, the deadline of 20 days to admit and agree to a 10.8.1 is rather short. A longer deadline, or at least, an extendable deadline on the athletes demand would be helpful, as athletes have a number of things they are trying to figure out at the time of a notice: they have to determine whether and which legal counsel to engage; they have to figure out where and how they are going to live (provided they are provisionally suspended); they have to cope with what this means for their careers; and they potentially have to try and figure out what caused their positive test.

In practice, the possibility of Art. 10.8.1 is to date in Switzerland only used by low level athletes, mostly recreational athletes. So it helps reduce costs on that end.

Issue: "proposal to clarify that Art. 10.8.2 (Case resolution agreements) only applies in exceptional cases."

Swiss Sport Integrity strongly disagrees with this interpretation. A case resolution agreement is a very helpful way to reduce the resources involved in a case and to resolve the matter rather quickly. It should be possible any time when an ADO and an athlete are in agreement about the sanctions (subject to approval by WADA).

Furthermore, increasing the flexibility upon which a reduction can be based in exceptional circumstances would also be helpful.

## Dopingautoriteit

Robert Ficker, Compliance Officer (Netherlands)

NADO - NADO

SUBMITTED

## 10.2. Relevant provision

Article 10.8.1 reads as follows:

### *One-Year Reduction for Certain Anti-Doping Rule Violations Based on Early Admission and Acceptance of Sanction*

*Where an Athlete or other Person, after being notified by an Anti-Doping Organization of a potential anti-doping rule violation that carries an asserted period of Ineligibility of four (4) or more years (including any period of Ineligibility asserted under Article 10.4), admits the violation and accepts the asserted period of Ineligibility no later than twenty (20) days after receiving notice of an anti-doping rule violation charge, the Athlete or other Person may receive a one-year reduction in the period of Ineligibility asserted by the Anti-Doping Organization. Where the Athlete or other Person receives the one-year reduction in the asserted period of Ineligibility under this Article 10.8.1, no further reduction in the asserted period of Ineligibility shall be allowed under any other Article.*

## 10.3. Issue

We are asked to provide feedback on the possibility of amending Article 10.8.1 on three points. In addition, the Code Drafting Team proposes to clarify that Code Article 10.8.2 (*Case Resolution Agreements*) only applies in exceptional cases.

## 10.4. Recommendations:[\[1\]](#)

-Doping Authority Netherlands supports all three points regarding to Article 10.8.1.

- Doping Authority does not see a problem with the proposal made by the drafting team with respect to 10.8.1. However, Doping Authority does not see the added value regarding the suggestion for Article 10.8.2, because these agreements can only be concluded with WADA's direct approval and participation, which means WADA is already in a position to assess whether the case is truly exceptional or not. We understand that the proposed reference to exceptional circumstances is intended to make ADOs aware that they can only approach WADA about the possible application of Article 10.8.2 in exceptional circumstances.

-Doping Authority Netherlands advises against introducing multiple 'early admission' sanction reduction provisions/regimes in the Code. The fact that such a provision was in the Code in the past and is consequently removed is evidence of the issues surrounding this prompt admission. The Code should make it crystal-clear when the one provision can be applied and when the other provision can be applied. An early admission resulting in a one year reduction in the one hand and another type of admission that can lead to the backdating of the start date. Either way, the Code must specify (a) when admissions can be considered prompt, and (b) admissions always have to be reviewed by the RMA in order to establish whether the admission is complete and truthful.

[\[1\]](#) This list follows the list used by the Code Drafting Team at concept #2.

### **Freelance journalist**

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

Reduction of one year from a possible four-year sanction, say for a steroid violation or even multiple steroid violation, is a big concession given to an athlete. Further reduction may be misinterpreted and misused. Making it 25 per cent would mean a possible eight-year sanction could be reduced to six, making the impact of a second violation or any other offence less meaningful and logical than at present.

### **Sports Tribunal New Zealand**

Helen Gould, Registrar (New Zealand)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

1. 10.8.1 should be opened up to violations carrying lower sanctions.
2. We would support the reduction to be amended to a 25% reduction.
3. The proposed change would prevent an athlete from getting the benefit of the provision in circumstances where there may have been a delay in getting legal advice; an athlete should not be penalised for a delay in those circumstances. The provision should not only be made available at the pre-charge stage.

We support the backdating of the start date for prompt admission.

### International Testing Agency

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

SUBMITTED

1. We support the extension of the 10.8.1 approach to all ADRVs and 10.14.3.
2. 25% of the default sanction would be the rule.
3. The tipping point should remain the charge (article 7 ISRM). In our experience, it might be risky to put athletes in such situation where they are asked to admit the ADRV very quickly and to forgo the B-sample. Especially considering that athletes are usually not legally represented in the early days of a case, it might be argued that they were pressured to admit and did not fully understand the consequences. Moreover, it is usually only at the moment of the charge, and once athletes have provided preliminary explanation, that the Athlete knows the ADO's definitive position on applicable sanction and can decide whether to accept a 10.8.1 or not.
4. We would be in favor of increasing the flexibility allowed in 10.8.2. and clarifying that it only applies in exceptional cases.
5. A standalone "prompt admission" provision allowing to backdate the sanction should only be reintroduced if the extension of 10.8.1 is not implemented. Otherwise, having a prompt admission ground, in addition to an extensive RMA could lead to situations of double-dipping.
6. Additional comment:

I&I colleagues have raised the fact that the introduction of the 10.8.1 mechanism has potentially reduced the incentive to provide Substantial Assistance. There has been some discussion of what is the scope of "admitting the ADRV" and I&I experts have requested to see the admission defined as a "full and complete admission as to the circumstances that led to the ADRV" and that only such admission would satisfy the requirement of 10.8.1. Whilst we agree with the underlying reasoning and principles, we believe this should be better addressed in a revamped substantial assistance regime. Many athletes may be unaware of the exact details of their ADRVs and in any event, ADO may not in a position to know whether the explanations are a candid admission of what the athlete did. In any event, it could be worth clarifying that substantial assistance is always available even when 10.8.1 applies.

This however brings to light another element to consider for amendment. As we understand it, article 10.8.1 is intended for athletes not challenging the ADRV; the underlying principle rather being resource allocations and clearing those cases from the docket. We believe a clarification along those lines would be helpful.

## Concept #6 – Substantial Assistance (39)

### Team USA Athletes' Commission

Meryl Fishler, Manger (United States)

Sport - Athlete Representative (State the name of the athlete body in Organization name)

SUBMITTED

1. We support Removing the “seriousness of the anti-doping rule violation committed” criterion

2. The value of information received sometimes cannot be known until later. Value is important but sometimes something considered a small value of important information when pieced together with other information proves to be of very high value.

### **Union Cycliste Internationale**

SUBMITTED

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

The UCI considers that the conditions (i.e. discovering/ or bringing forward an offence) to apply substantial assistance and hence benefit from a suspension of the period of ineligibility are too restrictive. This could explain why it cannot be often apply. Consequently the UCI fully supports the proposal to open the categories of information that might qualify for substantial assistance.

Moreover, once the conditions are met, there is not sufficient concrete incentive for the concerned person, in view of WADA's restrictive approach. In this respect the UCI supports the idea:

- to remove the seriousness of the ADRV committed as a criterion. - to focus on the value of the information provided taking into account the rider's level (meaning that an amateur athlete providing information about amateur sport shall benefit from the same "reduction" as a "pro athlete" providing "same" information about professional sport).

### **World Rugby**

SUBMITTED

David Ho, Senior Manager Anti-Doping Operations (Ireland)  
Sport - IF – Summer Olympic

We would support any change to make it easier for athletes to avail of the substantial assistance provision as we feel that currently the bar is set too high for athletes to achieve and that this disincentivises disclosure and potentially means we (as an ADO) and the industry as a whole may miss out on vital intelligence.

We agree with the proposals to: 1. to widen the qualifying criteria categories, 2. remove the 'seriousness of the anti-doping rule violation committed', and in particular we support the proposal to focus more on the value of the evidence provided. Evidence which may not directly lead to an ADRV, can still be critical in other areas such as informing the future strategy of a programme and we consider that anything that could help us obtain more information of this nature would be a positive step (provided of course that the amended provision could not be availed of too easily as to facilitate spurious attempts at reduction of a suspension).

### **National Olympic Committee and Sports Confederation of Denmark**

SUBMITTED

Mikkel Bendix Bergmann, Legal Advisor (Denmark)  
Sport - National Olympic Committee

#### **Concept #6 – Substantial Assistance**

The Danish NOC emphasizes a significant concern with Article 10.7.1, particularly regarding the requirement for athletes to have their name and information disclosed in the ruling. This creates a substantial hurdle as many athletes are reluctant to come forward due to the inevitable exposure within their environment. We propose the possibility of allowing athletes to withhold their identity from the ruling and hopefully create more of an incentive to disclose valuable information.

Furthermore, we advocate for an increase in sanction flexibility, particularly for young athletes facing ineligibility due to doping sanctions. Our recommendation is for the Drafting Team to explore the option of permitting young athletes, ineligible due to doping sanctions, the chance to engage in training during their period of ineligibility or potentially having their suspension duration shortened. Certain conditions, such as the young athlete providing assistance in uncovering or establishing code violations, especially those involving support personnel or

signatories, could be considered.

Additionally, we propose that athletes who are subject to exclusion might be afforded the opportunity to train under a doping sanction if they proactively come forward with information about other individuals involved in the case. In the context of substantial assistance, we suggest the possibility of an even greater reduction for young athletes if they provide information about support personnel involved in their doping case.

We further recommend that Article 10.7 be amended to allow for a reduction if substantial assistance provides highly valuable information, even if it does not necessarily lead to the discovery or disclosure of an anti-doping rule violation by another person. This adjustment recognizes instances where athletes can offer invaluable information that may not directly result in the identification of a violation but remains crucial to the overall anti-doping efforts. Naturally, the implementation of such adjustment should be clear and monitored to prevent potential exploitation.

**Botswana Football Association**

Boago Diphupu, Mr (Botswana)  
Sport - Other

SUBMITTED

Yes it is needed to in hence change.

**NZ Rugby**

Rebecca Giordano, Senior Legal Counsel - Regulations & Compliance (New Zealand)  
Sport - Other

SUBMITTED

We agree with all of the possible amendments highlighted regarding substantial assistance.

**UEFA**

Rebecca Lee, Anti-Doping Team Leader (Switzerland)  
Sport - Other

SUBMITTED

UEFA supports the development of this concept

UEFA does not have particular comments on it but agrees that opening the categories that might qualify for substantial assistance may be beneficial.

**International Tennis Integrity Agency**

Nicole Sapstead, Senior Director, Anti-Doping (United Kingdom)  
Sport - Other

SUBMITTED

Any reasonable mechanism that promotes discovery of ADRVs should be considered. Greater reductions in the otherwise applicable sanction is likely to be the most effective approach.

(i) and (ii) Agree that the seriousness of the ADRV is relevant but the more relevant factor is the value of the assistance provided in detecting/sanctioning the ADRV(s)

(iii) Supported by the ITIA

(iv) The ITIA agree that this is fairer.

**Sport NZ**

Jane Mountfort, Principal Policy and Legal Advisor (New Zealand)  
Public Authorities - Government

SUBMITTED

This submission is made on behalf of Sport New Zealand, which is the Crown agency responsible for advising the New Zealand government on anti-doping policy and ensuring New Zealand's compliance with the International Convention against Doping in Sport 2005.

We would like clarity on how the seriousness of the violation would operate in practice as a subsidiary criterion, if that is the preferred option.

Our preference is to keep the level of suspension of a period of ineligibility tied to a percentage of the sanction, for proportionality reasons, in keeping with WADA's proposal to make reductions in sanction under article 10.8.1 proportionate rather than absolute.

Otherwise, in principle, Sport NZ supports the proposals outlined.

### **Council of Europe**

SUBMITTED

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

### **Supported**

There is general agreement with WADA's proposals for the revision of Substantial assistance.

Further comments: focus on value of substantial assistance; clearer procedures for the ADO and the athlete, and guarantee of anonymity and whistleblower protection.

### **Organizacion Nacional Antidopaje de Uruguay**

SUBMITTED

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

No comments. Approved 1st stage. Manage flexibility in both NADOs and Fis for the 2-year period and allow reductions

### **Agence française de lutte contre le dopage**

SUBMITTED

Adeline Molina, General Secretary Deputy (France)  
NADO - NADO

Le dispositif d'aide substantielle est en effet peu effectif, notamment en raison de son caractère très contraignant, pour les sportifs comme pour les OAD, et compte tenu des avantages très limités qu'il offre aux sportifs qui collaborent.

Un processus en deux étapes serait en effet le bienvenu, notamment car il permettrait d'éviter que des procédures d'aide substantielle ne s'enlisent. Il récompenserait 1) le fait d'entrer en collaboration avec l'OAD, puis, le cas échéant, 2) les résultats obtenus.

- Il conviendrait de conserver le critère de gravité de la violation commise, au moins à titre subsidiaire, pour ne pas organiser une trop grande impunité pour les violations les plus sévères.

- Mettre l'accent sur la valeur de l'aide apportée est cohérent, mais il faudrait veiller, à des fins d'harmonisation notamment, à élaborer des lignes directrices, pour offrir de la prévisibilité aux OAD comme aux sportifs.

- Le principal obstacle au succès de l'aide substantielle est la rigidité du texte en matière de divulgation publique.

Seules des circonstances très exceptionnelles peuvent justifier, sous réserve d'un accord de l'AMA, que l'identité de la personne qui a collaboré soit protégée. Or, par principe, la personne qui collabore s'expose à toutes sortes de représailles et sera à tout le moins réticente à collaborer, ce d'autant que l'aide substantielle est la seule procédure permettant d'obtenir un sursis en vertu du Code.

Cette exigence est d'autant plus forte lorsque l'information fournie a été transmise à l'autorité judiciaire et donne lieu à des investigations pénales.

Il est donc indispensable: 1) de préciser que la partie de sanctions assortie du sursis ne doit pas être publiée pour

ne pas divulguer expressément la collaboration ; 2) d'assouplir considérablement le cadre de divulgation publique - y compris de la VRAD - en autorisant plus facilement les OAD à conclure des accords de confidentialité ou à prononcer la divulgation anonyme du résultat de la procédure.

### Anti-Doping Agency of Kenya

Bildad Rogoncho, Head of Legal Services (Kenya)  
NADO - NADO

SUBMITTED

I support the views and the suggestions made by the Code Review Team. I believe that the Substantial Assistance concept has not been fully utilized due to its vague nature and wording. More concise wording is required so that it is clear to the person giving the substantial assistance on the benefit or the percentage of the period of ineligibility to be reduced. The concept should be clear as an incentive and not a bait.

### Anti-Doping Sweden

Jessica Wissman, Head of legal department (Sverige)  
NADO - NADO

SUBMITTED

ADSE supports the proposal to opening the categories of information that might qualify for substantial assistance (e.g., breach of provisional suspension and/or period of ineligibility, strategies used to avoid sample collection, strategies used to avoid detection and/or being flagged by the athlete biological passport (ABP) models). ADSE also considers that a possibility of anonymity should be considered.

### NADA Austria

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

According to **Article 10.7.1 WADC** we believe that WADA should provide ADO's with more guidance on how to implement substantial assistance, for example by issuing a template agreement for substantial assistance or a chart in which each of the steps regarding substantial assistance is listed. Furthermore, we do not believe that the current system that is in place for substantial assistance "invites" athletes to provide much information, the benefits for athletes are not easy to get.

### NADA

NADA Germany, National Anti Doping Organisation (Deutschland)  
NADO - NADO

SUBMITTED

Removing the "seriousness of the anti-doping rule violation committed" criterion or make it a subsidiary criterion. Comment NADA: Agree? The seriousness of the ADRV committed is not related to the information, which might be received. An Athlete with a rather less serious ADRV may have valuable information at hand or in other cases should be rewarded for coming forward. Substantial assistance is adherent with the courage to come clean and should not be related to the fact of seriousness.

Focusing on the value of the substantial assistance provided.

Comment NADA: Absolutely agree? Information with regard to e.g. adaption to the TDP which MAY lead to further ADRV might be more valuable as any ADRV which is lacking the final evidence to be brought forward. In cases where an athlete can give information on an athlete who might not be directly facing an ADRV, but focus the ADOs anti-doping measure towards the athlete, training team etc., could be even more valuable than a single further ADRV.

Opening the categories of information that might qualify for substantial assistance (e.g., breach of provisional suspension and/or period of ineligibility, strategies used to avoid sample collection, strategies used to avoid detection and/or being flagged by the athlete biological passport (ABP) models).

Comment NADA: Agree? See above including adaptations to the TDP based on such as evidence of the athletes personal doping plans etc.

Clarifying that the level of the suspension should be considered in absolute terms, not as a percentage of the applicable period of ineligibility (in which case more serious offenders would receive a greater suspension, in absolute terms, merely as a result of the seriousness of their violation/length of their sanction).



Comment NADA: Agree

**Finnish Center for Integrity in Sports (FINCIS)**

Petteri Lindblom, Legal Director (Finland)

NADO - NADO

SUBMITTED

Agree with WADA's proposals for the revision of Substantial assistance.

**Sport Ireland**

Melissa Morgan, Anti-Doping Testing and Quality Manager (Ireland)

NADO - NADO

SUBMITTED

WADA has outlined various proposals in an attempt to increase the use of Substantial Assistance provisions. It is clear that they have not been used as often as intended, in fact Sport Ireland has never had a case of Substantial Assistance. Although having measures in place which encourage athletes to provide valuable information is worth exploring further, it is not clear that the proposals from WADA go far enough.

**NADO Flanders**

Jurgen Secember, Legal Adviser (België)

NADO - NADO

SUBMITTED

NADOF agrees that this is reviewed, but will follow up on more concrete propositions in how to apply this rule.

One basic remark is that for substantial assistance, it should be taken into account that an athlete of a lower level can have useful information, but the information in those cases is almost exclusively related to the competition level they belong.

NADOF in general supports the idea that not only information on individuals, leading to ADRVs should be considered as substantial assistance, but also information on doping strategies that can aid in understanding doping and refining test distribution and analysis.

**Canadian Centre for Ethics in Sport**

Elizabeth Carson, Senior Manager, Canadian Anti-Doping Program (Canada)

NADO - NADO

SUBMITTED

The CCES agrees with lessening the requirements in order to potentially expand the use of substantial assistance.

**ONAD Communauté française**

Julien Magotteaux, juriste (Belgique)

NADO - NADO

SUBMITTED

6) Substantial Assistance:

As a general remark, article 10.7.1 of the Code is very complex to implement, particularly when there is ultimately no anti-doping rule violation committed by another person.

Having saying that, we would be supportive to look for avenues to improve and to decrease the conditions of application of this article to make it more easy and more flexible to apply. And so we would be ok to find some means to this end.

However we would not be supportive to removing the “seriousness of the ADRV committed” criterion because the essence and interest of substantial assistance is to be able to uncover larger or worse ADRV.

From a flexibility perspective, we could however consider its application also for "less significant" violations. The article should therefore not necessarily exclude the discovery of so-called less significant violations but in this case, it would be appropriate to remain proportional (notably in terms of the reduction of the sanction) because the focus should remain on a means of better fighting more organized doping.

In relation to the proposal of focusing on the «value of substantial» assistance, we agree with the principle but we are wondering how. For us, it should be focused on organized doping and on certain ADRV, traffic for example.

In order to strengthen the fight against organized doping, in a proportionate manner nevertheless, the categories of information which could be qualified as substantial assistance could be broadened, for example those relating to strategies used to avoid detection.

Finally, in a proportional perspective, we could support that the level of suspension should be considered in absolute terms instead of a percentage of the applicable period of ineligibility (in which case more serious offenders would receive a greater suspension, in absolute terms, merely as a result of the seriousness of their violation and/or length of their sanction).

#### Dopingautoriteit

Robert Ficker, Compliance Officer (Netherlands)  
NADO - NADO

SUBMITTED

#### 11.2. Recommendations

Doping Authority supports the proposals suggested by the drafting team.

#### Sport Integrity Australia

Chris Butler, Director, Anti-Doping Policy and International Engagement (Australia)  
NADO - NADO

SUBMITTED

We **broadly agree** with the direction of these proposals. However, we encourage the Drafting Team to further expand the scope of these provisions.

We **agree** with removing the “seriousness of the anti-doping rule violation committed” criterion or making it a subsidiary criterion.

We **agree** the focus should be shifted to place more weight on the value of the information provided—acknowledging intelligence value, where there may not be a specific tangible outcome (further ADRV, investigation etc). This may include information about individual use/protocols that are useful for promoting anti-doping endeavours but do not implicate a third party or result in the discovery of an additional ADRV (see Code Concept #5). We support Drafting Team’s suggestion to focus on the ultimate value of the information being provided. We encourage the Drafting Team to consider a sliding scale which, in general terms, aligns the reduction in the sanction to the value of the information provided. Information that targets and removes high end facilitators is arguably more valuable than information which leads to a single ADRV against an individual athlete, and as such should give rise to a greater reduction in the period of Ineligibility.

The ISRM Guidelines states that “Substantial Assistance must result in one of the four outcomes specified in Code Article 10.7.1.1.” Practically speaking, how does this requirement interact with the requirement in the definition of Substantial Assistance that “the information must be credible and must comprise an important part of any case or proceeding which is initiated or, if no case or proceeding is initiated, must have provided a sufficient basis on which a case or proceeding could have been brought.”

In cases where the information provided by the Athlete has been referred to an external agency, for example the Therapeutic Goods Administration or law enforcement (and not in cases where we can discover or bring forward an ADRV by another Athlete). It is difficult to control what is done with the information within the time frames relevant to the ADRV proceedings. Nevertheless, the information may be of substantial assistance and lead to proceedings or further lines of inquiry in future. To consider the application of Substantial Assistance in these matters we are required to rely on the advice on external agencies as to whether the information provided was “credible” or “comprised an important part of any case or proceeding initiated.” This is problematic when the actions taken by an external agency do not align neatly with one of the outcomes specified in Article 10.7.1.

In such cases where a case or proceeding is not initiated by the external agency, we are also not able to evaluate whether the information provided by the Athlete “provided a sufficient basis on which a case or proceeding could have been brought.” Where an Athlete provides information for Substantial Assistance that is disclosed to an external agency, the Athlete can have an expectation of receiving a suspension on the basis that their information was “credible” by virtue of the fact that it was disclosed (even if no case was initiated).

We would welcome clarification from WADA as to what constitutes ‘exceptional circumstances’ pursuant to Article 10.7.1.2.

The current operation of the Substantial Assistance provisions means that working with an Athlete under this regime may not achieve an acceptable outcome to the Athlete in some circumstances. It is also unclear that a suspension for Substantial Assistance is available to an Athlete in addition to any reduction to their period of Ineligibility, and an Athlete may seek to rely on other provisions in the Code that allow for an explicit reduction in the period of Ineligibility leading. Where an Athlete chooses not to provide assistance then valuable anti-doping information may be lost.

As we have noted in relation to other Concepts about sanctions, the interpretation and application of the provisions dealing with Substantial Assistance must be clear, easily, and readily applied and upheld, and must be balanced and coordinated with other Code provisions dealing with sanctions, to ensure the best outcomes are achieved for both Athletes and ADOs.

*Issue: Without Prejudice Agreement*

Recommendation: Remove or amend the ability for an Athlete to seek a Without Prejudice Agreement (**WPA**) prior to giving Substantial Assistance. The evidence that is provided pursuant to a WPA cannot be used beyond that agreement and prolongs the progress of an Athlete’s anti-doping matter (as negotiations for waiving this agreement are required). The removal of the option for a WPA would not preclude an Anti-Doping Organisation from considering an Athlete’s information on a without prejudice basis generally (in accordance with legal principle). Alternatively, clarification could be provided that following entering into a WPA, for the information to be considered for the purpose of Substantial Assistance (and any suspension given), the Athlete would ultimately need to give that information on an open basis (which would assist in managing an Athlete’s expectations).

## **NADA India**

NADA India, NADO (India)  
NADO - NADO

SUBMITTED

-Simplify the substantial assistance process by removing the criterion related to the "seriousness of the anti-doping rule violation committed."

-Focus on the value of information provided and expand the categories eligible for substantial assistance.

-Leverage advanced data analytics and artificial intelligence for a more efficient assessment of the assistance's significance.

-Introduce a transparent two-stage process for granting limited suspension, with clear criteria for increasing the suspension at a later stage.

## Drug Free Sport New Zealand

Nick Paterson, Chief Executive (New Zealand)  
NADO - NADO

SUBMITTED

### Introduce an initial suspension of sanction for substantial assistance

**We support the concept** regarding an initial suspension of sanction. We consider that this provides an upfront incentive to the individual, as opposed to facing potential time delays in receiving the benefit due to the time associated with bringing a case based on substantial assistance.

### Remove the seriousness of the anti-doping rule violation

**We support the concept to make it a subsidiary criterion.** It may be that serious violations mean that the substantial assistance provided by that athlete has an increased benefit (e.g., involvement in administration or tampering).

### Focus on the value of substantive assistance provided

**We support the concept.** See comment above.

### Increase the categories of information that qualify for substantial assistance

**We support the concept.** Information such as how an athlete avoids detection, dosing practices, source of Prohibited Substance are valuable pieces of information to support anti-doping.

### Clarification of level of suspension in absolute terms

**We do not support the concept** on the basis that we don't consider this to materially change an individual's decision to provide substantial assistance.

## KADA

Shinhyeong jang, Legal / manager (Korea)  
NADO - NADO

SUBMITTED

Activation of substantial assistance

### **o Internal information evaluation procedures and regulatory protection measures for provided information are required.**

- Even in reality, there are very few cases where substantial assistance is applied because its requirements are strict. In particular, it takes a considerable amount of time until the results can be evaluated as the causal relationship is also required, which is an operational difficulty.

- Considering the nature of the closed sports community, it is desirable to assess the grace period through evaluation of the information provided in addition to relaxing the requirements to activate substantial assistance.

- Also, additional measures are needed to ensure the reporter's confidentiality and personal protection measures. In this regard, there is a need to exclude those who provided substantial assistance to the Code from public disclosure, enact protection regulations, and introduce regulations that allow them to be excluded from the data provided to athletes.

## USADA

Allison Wagner, Director of Athlete and International Relations (USA)  
NADO - NADO

SUBMITTED

Issue: “Introducing a two-stage process, whereby the initial granting of a limited suspension (if credible) could be increased at a later stage depending on the outcome.”

Recommendation: USADA does not think this proposal is necessary or would be effective. The purpose of a “suspension” of a period of ineligibility is so that it can be reinstated if the athlete stops cooperating. Thus, it can be granted before the individual’s cooperation is completed. Additionally, the athlete providing substantial assistance often has little control over the “outcome” as that is often determined by an arbitrator, judge, or jury and is based on factors outside the cooperating witness’s control. Cooperating witnesses, as with other athletes, are most concerned about the public announcement of their case, so a two-stage process of announcing a longer sanction at the beginning does not work in a cooperating witness’s favor. It is true that substantial assistance cannot be fully assessed until the assistance has been provided, but that is true of all cooperating witnesses. And USADA has had success with delaying the announcement until cooperation is complete. As stated above, however, because it is a suspension of a period of ineligibility, the credit could be given up front with the threat of reinstatement if the individual stops cooperating. (USADA does not prefer this method because it can cause the cooperating witness to be less responsive/cooperative.)

Issue: “Removing the ‘seriousness of the anti-doping rule violation committed’ criterion or make it a subsidiary criterion.”

Recommendation: USADA agrees with the removal of this criterion. Almost every anti-doping rule violation for which an individual is motivated to provide substantial assistance to receive a reduction is going to be serious. It therefore undercuts the usefulness of the substantial assistance provision to use the seriousness of their offense against them further.

Issue: “Focusing on the value of the substantial assistance provided.”

Recommendation: This dovetails with the issue below. But to the extent it does not overlap, USADA agrees that the value of the substantial assistance is important.

Issue: “Opening the categories of information that might qualify for substantial assistance (e.g., breach of provisional suspension and/or period of ineligibility, strategies used to avoid sample collection, strategies used to avoid detection and/or being flagged by the athlete biological passport (ABP) models).” Stated differently, substantial assistance is too narrowly defined in that it does not credit certain critical information to the fight against doping.

Recommendation: The scope of substantial assistance should include additional areas as described and include a catch all so that, with WADA’s approval, assistance that is substantial, even if it does not fit within one of the listed categories, is given credit.

Issue: “Clarifying that the level of the suspension should be considered in absolute terms, not as a percentage of the applicable period of ineligibility (in which case more serious offenders receive a greater suspension, in absolute terms, merely as a result of the seriousness of their violation/length of their sanction).”

Recommendation: As noted above, in USADA’s experience it is almost always individuals facing serious anti-doping rule violations who are most motivated to provide and most likely to have substantial assistance. So, USADA does not recommend regulating this area to such a degree proposed. There should be flexibility in providing meaningful credit for substantial assistance that does not have to fit into a pre-determined box, as circumstances vary greatly.

Additional Substantial Assistance Issues and Recommendations:

Issue: Substantial assistance in 10.7.1.1 refers to assistance that has been provided in the past tense as opposed to the definition of substantial assistance, which refers to ongoing and indeed forward-looking assistance, based on the requirements of continued cooperation.

Recommendation: Add the words “or is providing” to 10.7.1.1, so it reads “... in an individual case where the *Athlete*

or other *Person* has provided or is providing *Substantial Assistance* . . . .”

Issue: Arbitration Panels are not in a good position to assess and make substantial assistance decisions in the first instance (and potentially even on appeal). Substantial assistance may involve confidential law enforcement information, and the value of this information to law enforcement and the ADO is best assessed by the ADO directly evaluating the information.

Recommendation: Noting that currently substantial assistance decisions may be appealed under Article 13.2, it would be helpful if the Code would clarify in a comment to Article 10.7.1 that the decision in the first instance is *not* to be made by an arbitration body but by the ADO with RMA. There is a first instance decision that has come to this conclusion, but it would be helpful to memorialize this in the rules.

### Anti-Doping Norway

SUBMITTED

Martin Holmlund Lauesen, Director - International Relations and Medical (Norge)  
NADO - NADO

Our experience is that SA rarely comes to use because it has to be mentioned in the decision that the athlete has provided SA. Athletes who could potentially benefit from this, decide not to, or change their mind when they learn about this. It should be possible to stay anonymous and / or that the SA is not mentioned in the decision. Perhaps athletes providing SA should be able to train while serving a period of ineligibility (not compete!), or that minors could get an even greater reduction if they tell their ADO about Support Personnel who were involved in their doping case.

We fully support the possibility of SA coming into play at an early stage of someone’s case / investigation.

We fully support that the scope of SA should be expanded to involve not only information leading to another AAF, but it should suffice if someone provides information which teaches an ADO how an athlete avoided testing positive, how they managed their doping regime, how they traveled, how they hid their equipment – basically anything that makes us smarter and can lead to ADOs testing differently and smarter.

### UK Anti-Doping

SUBMITTED

UKAD Stakeholder Comments, Stakeholder Comments (United Kingdom)  
NADO - NADO

We welcome any proposals that will encourage the invoking of the Substantial Assistance provisions. It is unclear however, as to how a two-stage process would work in practice. We do not understand in what circumstances a suspension could be increased at a later stage depending on the outcome; this would appear to tie the *value* of Substantial Assistance directly to a panel decision for example.

We support the removal of “the seriousness of the anti-doping rule violation committed” criterion. We consider all violations to be serious.

We consider that ‘*value*’ in the context of Substantial Assistance needs to be clarified. What matters are relevant to determining the value of Substantial Assistance?

We welcome widening the categories of information that might qualify for Substantial Assistance and the examples given in the concept paper.

We consider that the level of suspension can be provided in absolute terms but this will require Code Article 10.7.1 to be amended, and reconsideration of the 75% maximum suspension available and how this is expressed.

We also consider that the provision could be improved so that signed written statements and/or recorded interviews are provided only where demanded by an ADO. Statements and interviews are not always required to process Substantial Assistance, e.g. the provision of an Athlete’s name could lead to Testing and an Anti-Doping Rule

Violation being discovered and brought forward. In those circumstances a statement or interview creates further work for an ADO and is not of any material use to the case.

## CHINADA

Yao Cheng, Result Management (China)  
NADO - NADO

SUBMITTED

**Comment 1?** Substantial assistance from the individual involved often plays a key role in pursuing serious ADRVs by ADOs. In order to enhance the efficacy of this Article, we support the proposal of lessening the associated requirements, such as removing the "seriousness of the ADRV committed" criterion.

**Comment 2:** However, how to measure the value of substantial assistance is relatively complicated in the practice. Different ADOs may have their own judgments. We hope that WADA could provide clear guidance or issue examples.

## Japan Anti Doping Agency

YUICHI NONOMURA, Result Management (??)  
NADO - NADO

SUBMITTED

Agree on the proposed point #3 and #4 ("Opening the categories of information.." and "Clarifying .."). Better to keep "seriousness of the anti-doping rule violation committee" criterion as the current. Again, it is important to avoid the perception that doing "Substantial Assistance" can let Athletes/other person go away from serious sanction periods. It is significant to emphasize that Additional proposal: If an athlete had AAF, then "fully cooperate with investigation" occurs. However, that athlete's entourage/ASPs may not necessarily be cooperative of investigations. It would be useful to mention / clarify "full cooperation" means that the person (committed violation) cooperating must ensure the cooperation by others. Another factor to take into account is that if substantial assistance is expanded, NADOs will be burdened with the following issues. It is important to carefully examine and have more discussions within the anti-doping community. NADOs may need to have professional staff (ex. ex-police officer etc) who is capable to conduct interview athletes. To guarantee fair treatment, NADOs may need to have a capability equivalent to the disciplinary panel.

## Anti-doping Bureau of Latvia

Mārtiņš Dimants, Director (Latvia)  
NADO - NADO

SUBMITTED

LAT-NADO concurs with the proposal to reduce the requirements associated with substantial assistance. Simultaneously, it is essential to consider the potential implications for the suspension of sanctions. If the seriousness of the committed anti-doping rule violation is diminished, there may be room for larger suspensions as a result of substantial assistance.

A review of CAS case law reveals instances where substantial assistance, even in cases involving the revelation of doping chains and the sanctioning of multiple individuals, typically resulted in a mere 6-month suspension of ineligibility. LAT-NADO observes that athletes may be hesitant to provide information to NADOs or other institutions if the potential reduction in sanctions is perceived as inadequate. Consequently, LAT-NADO recommends a reconsideration and adjustment of the stance on this matter, advocating for more significant reductions in sanctions for substantial assistance.

Furthermore, LAT-NADO advises WADA to outline in its guidelines the specific situations in which WADA would approve the maximum suspension reduction for substantial assistance. This would provide clarity and guidance to all parties involved in the anti-doping process.

Kristina Coburn, Compliance Manager (Russia)  
NADO - NADO

RUSADA proposes making the 'seriousness of the ADRV committed' a subsidiary criterion as the ADRV also impacts clean athletes' rights to participate in doping-free sports. However, when considering the substantial assistance, this criterion is frequently disregarded and the value of substantial assistance comes front. Although, it is critical to focus on the value of the substantial assistance, it is also reasonable to evaluate the harm that this ADRV (particularly when perpetrated by the ASP) could have caused.

We support the proposal to broaden the categories of information that might qualify for substantial assistance. It is worth mentioning that analytical and/or practical information related to prevalent doping schemes among athletes and ASP might be beneficial for investigation, as well as testing and results management. ADOs can identify and determine the people involved with this knowledge and a comprehension of the inner functioning scheme (particularly when this information is supported by proof).

### **Swiss Sport Integrity**

Ernst König, CEO (Switzerland)  
NADO - NADO

As Swiss Sport Integrity lately did have a couple of cases involving substantial assistance, it welcomes changes. For Swiss Sport Integrity substantial assistance is a very helpful tool to get precious information.

Issue: "Substantial Assistance - Removing the 'seriousness of the anti-doping rule violation committed' criterion or make it a subsidiary criterion."

Swiss Sport Integrity agrees with the removal of this criterion, as we believe that almost every ADRV for which a person is motivated to provide substantial assistance to receive a reduction is going to be serious. It therefore undercuts the usefulness of the substantial assistance provision to use the seriousness of their offense against them further. And it prevents using it in other cases that are less serious. In those cases, a person would not be very motivated to talk to the ADO. At least, it would open new possibilities of investigation.

Issue: "Focusing on the value of the substantial assistance provided."

Swiss Sport Integrity absolutely agrees that the focus should be on the value of the substantial assistance, most importantly for its investigations, understanding of doping techniques etc.

Issue: "Introducing a two-stage process, whereby the initial granting of a limited suspension (if credible) could be increased at a later stage depending on the outcome."

Swiss Sport Integrity does not think this proposal is necessary or would be effective. The purpose of a "suspension" of a period of ineligibility is so that it can be reinstated if the athlete stops cooperating. Thus, it can be granted before the individual's cooperation is completed. Additionally, the athlete providing substantial assistance often has little control over the "outcome" as that is often determined by a Tribunal and is based on factors outside the cooperating witness's control. Cooperating witnesses are mostly most concerned about the public announcement of their case, so a two-stage process of announcing a longer sanction at the beginning does not work in a cooperating witness's favor. It is true that substantial assistance cannot be fully assessed until the assistance has been provided, but that is true of all cooperating witnesses. And Swiss Sport Integrity has had success with delaying the Results Management procedures until cooperation is complete. As stated above, however, because it is a suspension of a period of ineligibility, the credit could be given up front with the threat of reinstatement if the individual stops cooperating.

Issue: "Opening the categories of information that might qualify for substantial assistance (e.g., breach of provisional suspension and/or period of ineligibility, strategies used to avoid sample collection, strategies used to avoid detection and/or being flagged by the athlete biological passport (ABP) models)."

Swiss Sport Integrity agrees with this proposal. The scope of substantial assistance should include additional areas as described and include a catch all so that assistance that is substantial, even if it does not fit within one of the listed categories, is given credit.

Issue: "Clarifying that the level of the suspension should be considered in absolute terms, not as a percentage of the applicable period of ineligibility (in which case more serious offenders would receive a greater suspension, in absolute terms, merely as a result of the seriousness of their violation/length of their sanction)."

Swiss Sport Integrity disagrees. In Swiss Sport Integrity's experience as of late, it is almost always individuals facing serious ADRV who are most motivated to provide substantial assistance. Therefore, Swiss Sport Integrity does not recommend regulating this area to such a degree proposed. There should be flexibility in providing



meaningful credit for substantial assistance that does not have to fit into a pre-determined box, as circumstances vary greatly.

### **Anti Doping Danmark**

Silje Rubæk, Legal Manager (Denmark)  
NADO - NADO

SUBMITTED

We have a significant concern with article 10.7.1, particularly regarding the requirement for athletes to have their name and information appearing in the ruling. This creates a substantial hurdle as many athletes are reluctant to come forward with information due to the exposure within their environment. We propose the possibility of allowing athletes to withhold their identity from the ruling.

Additionally, we propose that athletes who are subject to a sanction, might be afforded the opportunity to train during their sanction if they come forward with information about other athletes/support personal involved in the case. In addition to substantial assistance, maybe it could be possible of an even greater reduction for minor athletes, if they provide information about support personal involved in their doping case.

We further recommend that Article 10.7 be amended to allow for a reduction if the substantial assistance provides highly valuable information, but not necessarily lead to the discovery or disclosure of an Anti-doping rule violation by another person. We have had some cases where athletes can give very valuable information, but it cannot lead to discovering or bringing forward a violation. Of course it should be clarified or monitored, so that it is not possible to abuse this rule.

### **Caribbean Regional Anti-Doping Organization**

Marsha Boyce, Communications & Projects Coordinator (Barbados)  
NADO - RADO

SUBMITTED

Re - Substantial Assistance - the caveat of the "seriousness of the anti-doping rule violation committed" should not be removed; however it is agreed that consideration can be given to making it a subsidiary criterion.

### **Sports Tribunal New Zealand**

Helen Gould, Registrar (New Zealand)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

1. Suspensions of ineligibility should be applied to any athlete offering substantial assistance regardless of the seriousness of the ADRV – the seriousness will be reflected by the level of sanction that can be imposed prior to the suspension.
2. The significance of the substantial assistance provided is already contained in Article 10.7. It is relevant and should be kept.
3. The categories should be broad because these are also ADRVs.
4. If absolute terms are applied, they should be made very clear and whether or not there is a discretionary element to them should also be spelt out.

### **Freelance journalist**

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

There is an urgent need to define very clearly what could be termed "substantial assistance". It should pave the way for something "substantial" rather than any assistance perceived as substantial by the athletes and their teams. In an Indian case in 2023, the appeal panel observed that the athlete's coach filing a police complaint against a supplements trader who allegedly indulged in sale of "contaminated products" was "substantial". It so happened that the coach actually filed a police complaint about a spurious product after the police had raided the

trader and initiated the proceedings against the owners. Since any concession under "substantial assistance" had to have the concurrence of WADA (which neither the panel nor the counsels were apparently aware of) the matter was not pursued further by the ADO. But it showed how this clause could be interpreted by different parties depending on the circumstances.

### International Testing Agency

SUBMITTED

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

- We support the removal of the "seriousness of the ADRV committed" since it has precluded the granting of substance assistance and it should, at best, be considered as one factor in establishing the quantum of the reduction.

- The value of the substantial assistance should be the key criterion.

- Expanding the categories of information which qualify as substantial assistance is also needed. The examples listed by WADA are all relevant.

- The two-prong requirement to 1) give a written confess the athlete's own ADRV and 2) provide information leading to other ADRVs/cases should be dissociated. In our experience, some athletes have refused to speak about their cases, but had valuable information about other athletes and vis-versa. As explained under the RMA concept, the athletes' own doping protocols are very useful for ADOs and assist us in refining our testing strategy and I&I. An incentive to receive this information should be put in place via the substantial assistance regime. However, not all athletes will be willing to provide information on other athletes/ASP or even have access to this kind of information. Conversely, athletes should not be precluded from benefitting from substantial assistance when providing information unrelated to their cases when they were not forthcoming with their own cases.

- We agree that the level of the suspension should be defined in absolute terms. We believe that the possibility not to disclose the sanction (article 14) should be added in exceptional circumstances.

## Concept #7 – Use of Data (34)

### Team USA Athletes' Commission

SUBMITTED

Meryl Fishler, Manger (United States)  
Sport - Athlete Representative (State the name of the athlete body in Organization name)

1. Where there is no fault or negligence, an athlete's consent should be provided before publication of those cases. All others should include publication.

2. Support personnel cases should be handled the same as publications involving an athlete

### Union Cycliste Internationale

SUBMITTED

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

Article 5.5 : Do we really need to duplicate the ISTI?

Article 19, 6.2 and 6.3 : Adjustements regarding these provision would indeed be appropriate

Article 14.3: in case of "no fault or negligence", it shall be made only with the athlete consent. The same could apply for substance of abuse case where a 3 or 1 month period of ineligibility is imposed.

### World Rugby

SUBMITTED

David Ho, Senior Manager Anti-Doping Operations (Ireland)  
Sport - IF – Summer Olympic

We would support the proposed change to provide appropriate minimum standards for the use of samples and data in research and to define the scope of research versus other activities involving the analysis of samples and data.

We would agree that in cases of no fault, disclosure should be with the athlete's consent, but we do not see a need to change this for cases of no significant fault, unless there were a proven risk of harm to the athlete (e.g. mental health risk cases), in which case some exceptional discretion should be allowed to the ADO according to strict criteria. If we make it entirely optional/case by case for no significant fault, we may run the risk of some ADOs choosing (with justification or otherwise) to never disclose such cases, which would seem to be against the spirit of this provision.

### **National Olympic Committee and Sports Confederation of Denmark**

SUBMITTED

Mikkel Bendix Bergmann, Legal Advisor (Denmark)  
Sport - National Olympic Committee

#### **Concept #7 – Use of Data**

In Denmark, we uphold a commitment to openness and transparency by publicly disclosing all rulings and sanctions in the anti-doping field. Consequently, The Danish NOC endorses the suggested modifications to Article 14.3, aiming to align with essential public interest objectives.

While we appreciate the consideration of athlete consent, we advocate for the optionality of athlete consent in the publication process. We believe that the decision to publish should not be solely contingent on athlete consent but should instead be made optional, always respecting the individual country's data protection legislation.

It is essential to note that the upcoming ruling by the European Court of Justice, expected in 2024, will likely give an answer to many questions regarding the publication of rulings and sanctions. Consequently, we propose that these legal proceedings and the guiding principles established by the court be diligently incorporated into the revised code to ensure its alignment with evolving legal standards.

### **Botswana Football Association**

SUBMITTED

Boago Diphupu, Mr (Botswana)  
Sport - Other

yes

### **NZ Rugby**

SUBMITTED

Rebecca Giordano, Senior Legal Counsel - Regulations & Compliance (New Zealand)  
Sport - Other

We agree with the proposal to expand Article 19 and make corresponding adjustments to Code Articles 6.2 and 6.3 to provide appropriate minimum standards for the use of samples and data in research and to define the scope of research versus other activities involving the analysis of samples and data. Further, we agree that such minimum standards could then be expanded upon in guidelines.

We agree with all of the proposals regarding the publication of anti-doping sanctions.

### **UEFA**

SUBMITTED

Rebecca Lee, Anti-Doping Team Leader (Switzerland)  
Sport - Other

UEFA supports the development of this concept

UEFA has no particular comment concerning Articles 5.5 and 19 as well as to make amendments to Articles 6.2 and 6.3.

With respect to the publication of anti-doping sanctions, UEFA publishes updates on its website on a regular basis whenever decisions are taken. We agree that case-by-case assessments shall be made in relation to publications.

### International Tennis Integrity Agency

SUBMITTED

Nicole Sapstead, Senior Director, Anti-Doping (United Kingdom)  
Sport - Other

Article 6.2 and 19 - This would be welcomed by the ITIA

Article 14.3 - If there is to be a discretion or requirement not to publish in certain cases the ITIA would suggest that publication be permitted where the player's name is already in the public domain or the player has made a public statement (as it will often be important to clarify the facts through release of an appropriately redacted decision). The ITIA would ask that WADA considers an exception to situations each as when an athlete is sanctioned for failing to receive a retroactive TUE for ADHD medication but has received one prospectively for the medication/treatment/condition etc. What purpose does a published decision serve other than to disclose that the player has ADHD and forgotten to apply for a TUE in advance of being tested? Could such decisions be replaced by a short factual statement by the ADO that sets out the skeleton facts and the sanction but falls short of disclosing details about the player? In such circumstances the player is not a doper and have received a sanction for carelessness or forgetfulness. This ensures there is still transparency about a finding (to a limited extent) and this could still serve as a warning to athletes about the need to apply for TUEs etc

### Sport NZ

SUBMITTED

Jane Mountfort, Principal Policy and Legal Advisor (New Zealand)  
Public Authorities - Government

This submission is made on behalf of Sport New Zealand, which is the Crown agency responsible for advising the New Zealand government on anti-doping policy and ensuring New Zealand's compliance with the International Convention against Doping in Sport 2005.

Sport NZ supports minimum standards for data collection.

Sport NZ also supports proposals that:

- where 10.5 applies (no fault or negligence), publication of sanctions be made only with athlete consent;
- where Article 10.6 applies (no significant fault or negligence), publications be optional (and therefore subject to a case by-case assessment); and
- exceptions be admitted to the mandatory publication of sanctions against athlete support personnel, similar to those set out in Article 14.3.7.

Sport NZ seeks that any amendments to articles 6.2 and 6.3 do not weaken the personal data protections contained therein.

### Council of Europe

SUBMITTED

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

### General remark

Reference is made to the General Data Protection Directive is binding for all European Union member states. This also applies to the publication of sanction decisions.

It remains to be seen how the European Court of Justice will rule on the question referred in the near future (2024). These proceedings and the court's guiding principles should definitely be incorporated into the WADC2027.

### **COCOM**

Stephanie Sirjacobs, Legal adviser (Belgium)  
NADO - NADO

SUBMITTED

(2e ii) faire attention sur le côté optionnel car risque de créer une insécurité juridique sauf si exceptions clairement établies et limitées (intérêt public,...).

(iii) pour quelles raisons y aurait-il de "traitement de faveur" pour les "autres personnes", car la publication peut ici être un moyen de montrer aux sportifs eux-mêmes les risques de faits de dopage de leur entourage même.

### **Organizacion Nacional Antidopaje de Uruguay**

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

SUBMITTED

No comments. Approved 1st stage.

### **Agence française de lutte contre le dopage**

Adeline Molina, General Secretary Deputy (France)  
NADO - NADO

SUBMITTED

- Les évolutions envisagées de la publication dans les cas dans lesquels les articles 10.5 et 10.6 s'appliquent, sont les bienvenues, dans la mesure où elles permettent un assouplissement des règles de divulgation publiques pour les faits les moins graves.

- Un régime d'exemption de la publication pour les personnels d'encadrement n'apparaît en revanche pas souhaitable, sauf à le corrélér à la gravité de la faute. Il est en effet particulièrement nécessaire et dissuasif d'assurer la publication des cas impliquant des personnels d'encadrement.

Comme indiqué précédemment, il est vivement encouragé d'assouplir les règles de publications dans les cas d'aide substantielle, pour favoriser la dénonciation de faits de dopage et protéger les personnes qui collaborent avec les OAD.

### **NADA**

NADA Germany, National Anti Doping Organisation (Deutschland)  
NADO - NADO

SUBMITTED

Comment NADA:? Most European NADOs and IFs seated in Europe have to adhere to the General Data Protection Regulation (GDPR). While the rules to be applied are the same in all these countries, the approach of data protection state authorities for interpretation of the rules is not. A more uniform approach is very welcome, however, no NADO / IF shall be obliged to breach any rules or orders of their national data protection system just to remain Code-compliant.

### **Anti-Doping Sweden**

Jessica Wissman, Head of legal department (Sverige)  
NADO - NADO

SUBMITTED

ADSE supports that Code Article 5.5 should better reflect that whereabouts information are used in risk assessment and prioritization process necessary for intelligence-led testing.

ADSE agrees that the publication of Anti-Doping sanctions is integral to achieving the public interest aims of the World Anti-Doping Program. ADSE support the proposal to make adjustments to Code Article 14.3 to: (i) reflect the important public interest purposes achieved by publication. Although, considering GDPR and national legislation, which prevails over the Code and IS, ADSE assess that the publication cannot be completely harmonized in a global manner.

ADSE supports the proposal that publication should be made only with athlete consent where 10.5 applies (no fault or negligence); and support that the publication should be made optional (on a case-by-case assessment) where Code Article 10.6 applies (no significant fault or negligence).

### **Canadian Centre for Ethics in Sport**

SUBMITTED

Elizabeth Carson, Senior Manager, Canadian Anti-Doping Program (Canada)  
NADO - NADO

The CCES supports drafting team's consideration of the application of Article 14.3 in cases where the public disclosure may be disproportionate to the ADRV.

### **Japan Anti Doping Agency**

SUBMITTED

YUICHI NONOMURA, Result Management (??)  
NADO - NADO

On first part of proposal, re. Whereabouts information - agree.

Re. third paragraph proposal - we agree on (i) however, it is necessary to have a common understanding what "the public interest purposes" mean. For the case of (ii) and (iii) harmonization may be difficult (some apply differently from others).

### **ONAD Communauté française**

SUBMITTED

Julien Magotteaux, juriste (Belgique)  
NADO - NADO

#### 7) Use of data:

In relation with this concept, we could be ok with

- an update of article 5.5 of the Code to better reflect that whereabouts are used in risk assessment and prioritization processes necessary for intelligence-led testing, as required by the International Standard for Testing (IST);

- a possible expand of article 19 and some corresponding adjustments to Code Articles 6.2 and 6.3 to provide appropriate minimum standards for the use of samples and data in research and to define the scope of research versus other activities involving the analysis of samples and Data. These minimum standards could then be expanded upon guidelines. However, this possible expansion of article 19 and the corresponding adjustments to Code Article 6.2 and 6.3 must not lead to increase the Signatories responsibilities on this topic, nor increase the Signatories budget.

- some possible adjustments to Code Article 14.3 to

- i) reflect the important public interest purposes achieved by publication;

- ii) consider whether publication should be made only with athlete consent where article 10.5 applies (no fault or

negligence);

iii) consider whether publication should be made optional (and therefore subject to a case-by-case assessment) where Code Article 10.6 applies (no significant fault or negligence);

iv) consider whether exceptions are required to the mandatory publication of sanctions related to athlete support personnel similar to those set out in Article 14.3.7.

For us, the exceptions to the mandatory publication of decisions provided in Article 14.3.7 for minors, protected persons and recreational athletes must in any case remain. It could be added that publication of decisions for these categories is an exception, only after evaluation and if the public interest of the anti-doping program requires publication in a particular case.

Generally, the publication of decisions should only be mandatory for elite athletes and their staff. For other athletes, it should not be mandatory.

#### Dopingautoriteit

Robert Ficker, Compliance Officer (Netherlands)  
NADO - NADO

SUBMITTED

#### 11.2. Recommendations

Doping Authority has no comments at present but will await the proposals suggested by the drafting team regarding Code Article 5.5., 6.2, 6.3 and 19 Code. Regarding the publication of sanctions Doping Authority has made a general observation that in case of conflict between the Code on the one hand and the GDPR/national data protection authority decision on the other hand, national data protection laws prevail.

#### Sport Integrity Australia

Chris Butler, Director, Anti-Doping Policy and International Engagement (Australia)  
NADO - NADO

SUBMITTED

**The Code Drafting Team intends to update Code Article 5.5 to better reflect that whereabouts are used in risk assessment and prioritization processes necessary for intelligence-led testing, as required by the International Standard for Testing (IST).**

#### *Use of Athlete Whereabouts information*

We **support** the proposal to update Code Article 5.5 to better reflect that whereabouts are used in risk assessment and prioritisation processes necessary for intelligence-led testing, as required by the International Standard for Testing.

**The Code Drafting Team intends to expand Article 19 and make corresponding adjustments to Code Articles 6.2 and 6.3 to provide appropriate minimum standards for the use of samples and data in research and to define the scope of research versus other activities involving the analysis of samples and data. The Code Drafting Team considers that such minimum standards could then be expanded upon in guidelines.**

#### *Use of sample and data in research and activities*

We **support** the proposal to expand Article 19 and make corresponding adjustments to Code Articles 6.2 and 6.3 to provide appropriate minimum standards for the use of samples and data in research and to define the scope of research versus other activities involving the analysis of samples and data.

It is important to better define the types of research that can be undertaken and clarify how research protocols will be applied, for example, to ensure the anonymity of the individual, and take into account the use of data for multiple research purposes as well as the use of data in research using new techniques engaging artificial intelligence and

big data sets.

It is also important to clearly distinguish between research and use of samples and data for other anti-doping purposes.

We encourage the Drafting Team to provide more guidance on the activities that fall within an anti-doping purpose to ensure an Athlete's data is never misused and that all appropriate consents are in place.

**The Code Drafting Team thus proposes to make adjustments to Code Article 14.3 to: (i) reflect the important public interest purposes achieved by publication and ensure the measure is implemented in a harmonized manner globally; (ii) consider whether publication should be made only with athlete consent where 10.5 applies (no fault or negligence); (iii) whether it should be made optional (and therefore subject to a case-by-case assessment) where Code Article 10.6 applies (no significant fault or negligence) ; and (iv) whether exceptions are required to the mandatory publication of sanctions related to athlete support personnel similar to those set out in Code Article 14.3.7.**

#### *Publication of sanctions*

We **support** the proposal to amend Code Article 14.3 to reflect the important public interest purposes achieved by publication and ensure the measure is implemented in a harmonized manner globally.

This proposal may assist in managing expectations regarding 'exceptional circumstances' and non-disclosure of anti-doping rule violations in the context of substantial assistance pursuant to Article 10.7.1.2 .

#### *Publication with consent where Article 10.5 applies (no fault or negligence)*

We **query** the utility of a consent provision (Instead we suggest the requirement to publish where Article 10.5 applies is either removed completely, or maintained) as in most circumstances, it seems likely that most athletes would not consent to their matter being published, unless their matter was already in the public domain (see Article 14.3.1 of the WADC).

There is also an added benefit to publishing (for transparency) details of a case but no name or identifying features to protect the wellbeing and reputation of the person who is determined not to be at fault. Given they are exceptional/uncommon, publication of these cases can demonstrate the anti-doping system working.

#### *Publication is optional where Article 10.6 applies (no significant fault or negligence)*

We **do not support** this proposal—a finding of no significant fault or negligence is more common, and the athlete is still at fault. We would seek to continue to be able to publish these matters not least because there is educational value gained from being able to speak about and use these case examples. While publication would be possible under an "optional" arrangement, it may decrease harmonisation across ADOs.

#### *Whether exceptions are required to the mandatory publication of sanctions related to athlete support personnel similar to those set out in Article 14.3.7 (mandatory publication is not required for Minors, Protected Persons, Recreation Athletes)*

We **do not agree** with this proposal. Athlete Support Personnel play a critical role in compliance by Athletes under the World Anti-Doping Code and should be held to account in the same way Athletes are, given their proximity to Athletes and positions of power (in the case of coaches, for example).

The publication of anti-doping sanctions is integral to achieving the public interest aims of the World Anti-Doping Program, specifically as it deters doping, alerts the sport and anti-doping communities to individuals that have engaged in doping practices, and informs the general public, including younger athletes and children, so they properly understand and appreciate why doping is both wrong and dangerous to health.

While sanctions should be published, we encourage the Drafting Team to consider whether there should be additional flexibility built into the system (with adequate protections such as of the approval of WADA) to allow for non-publication when the circumstances are exceptional. As further prompts for discussion, WADA may wish to investigate whether it should be mandatory/optional for the publication of Substance of Abuse violations –



especially where the athlete has entered an agreed rehabilitation program (see below).

Additional note: In relation to Article 4.2.3 (Substances of Abuse) – we suggest that consideration be given to providing discretion for the publication requirements for a Substance of Abuse, given it is not related to enhancing performance and publication may have a disproportionate impact on the person involved.

### **NADA India**

NADA India, NADO (India)  
NADO - NADO

SUBMITTED

-Update Code Article 5.5 to explicitly detail the use of whereabouts information in risk assessment and prioritization processes.

-Establish standardized protocols for the use of samples and anti-doping data in research, ensuring compliance with privacy regulations.

-Leverage blockchain technology for secure and transparent data sharing among stakeholders.

-Introduce clear guidelines for data use in research, specifying the permissible scope and purposes to balance anti-doping efforts with privacy concerns.

### **Drug Free Sport New Zealand**

Nick Paterson, Chief Executive (New Zealand)  
NADO - NADO

SUBMITTED

#### **Use of whereabouts information in risk assessment and intelligence**

**We support the concept** of better reflecting how whereabouts information can be used in intelligent testing and risk analysis.

However, we also note the primary purpose of whereabouts information is to locate athletes for no notice testing. That should always be the ADOs first duty. ADOs do not have a duty to use it to effectively detect anti-doping violations. Many ADOs simply do not have the resource to do this.

#### **Use of samples in data and research**

**We support the concept.**

#### **Publication of sanctions**

**We do not support the concept.** We propose that where there is no fault or negligence established, or no significant fault or negligence, naming should be optional. This should be considered on a case by case basis and should appropriately balance the individual interest against the public interest of naming, such as where the sanction has already been served, the public interest will likely be lower and not naming may be more appropriate; or where there are significant acute mental health concerns evidenced the individual interest may outweigh the public interest.

We note that there are different options available with naming, such as naming an athlete on an ADO's website and advising the relevant interested parties, and/or referencing a name specifically in media statements.

#### **Other**

The code drafting team should also consider the specific inclusion of a data sharing clause, allowing for deidentified athlete data to be shared for use for intelligence purposes e.g. to inform testing programs. Accessing global data would allow ADOs to see global trends of prohibited substance use and adjust their testing program to target these

trends in real-time.

Such access could be provided through a secure WADA website/data warehouse. The current PDF testing reports, such as the Testing Figures report, are too old and historical by the time they are issued and are unable to be adequately analysed. As such they do not appropriately assist intelligent testing practices.

## KADA

Shinhyeong jang, Legal / manager (Korea)  
NADO - NADO

SUBMITTED

Selective publication of anti-doping sanctions

### A. Review of domestic circumstances according to current regulations

o The current regulations on publication have very narrow exception provisions and require that the case handling details, including the event, rules violated, athlete's name, related prohibited substances, and prohibited method, be posted for at least 1 month within 20 days after the sanction decision.

o Uniform publication to the public has been criticized heavily in terms of athletes' privacy, but by making it public, it also serves the great public interest of preventing other athletes participating in sports from becoming involved with the violator in training, coaching, etc. by making them aware of who is violating the rules.

o Selective publication may have some validity regarding personal information protection, considering the seriousness of the violation of regulations or the level of sanctions. However, there are a few cases where violators change their names and work as instructors, etc., even now, and if publication is implemented selectively, there is a risk that the function of preventing doping will deteriorate considerably as rule violators will become more active in the sports field even after the sanction decision is given, and it is possible that clean athletes who have not committed doping violations to be involved with violators without knowing the truth.

### B. Opinions on the amendment

o Regarding the expansion of the exception provision, it would be appropriate to apply it to **athletes who received penalties lower than reprimand due to lack of fault or negligence.**

International (IF) Recognition and Jurisdiction of TUE approved by National Anti-Doping Organization (NADO)

### A. Inefficiencies in administrative procedures related to athletes, IFs, and NADO TUEs

#### o There is a need to review a plan for IF to allow NADO's TUE conditionally

- ? IF may request additional data regarding the TUE for which the athlete has obtained the approval from NADO, but since only recognition or rejection can be made, even if some adjustments such as 'shortening the approval period' are required for the existing approval, the athlete has to reapply and seek approval for the TUE. Considering the unnecessary aspect of administrative procedures, it is reasonable for IF to conditionally allow existing TUEs.

- If IF needs additional data for an existing approved TUE, it is necessary to improve the system so that the approved review results, such as 'shortening the approval period' of the relevant TUE, can be partially adjusted through a separate review process. For this, it should be indicated in the international standards that NADO can provide TUE data when an IF request is made as in ? as a way to receive information from NADO.

## Sport Ireland

Melissa Morgan, Anti-Doping Testing and Quality Manager (Ireland)  
NADO - NADO

SUBMITTED

It is agreed that Article 19 and Articles 6.2 and 6.3 are outdated but clarity is needed with respect to the ideas proposed for these Articles before a view can be formed on their appropriateness.

Sport Ireland is, however, concerned about the proposal to adjust Article 14.3 to make it optional (and therefore subject to a case-by-case assessment) where Article 10.6 applies (no Significant Fault or Negligence). WADA has repeatedly cited inconsistency in decision making and/or the application of various provisions of the Code as a rationale for many of the changes now proposed. However, without sufficient publication of sanctions where there was No Significant Fault or Negligence, ADOs may not have sufficient precedents available to them to assist in decision making or to help create a sense of fairness and consistency.

## USADA

Allison Wagner, Director of Athlete and International Relations (USA)  
NADO - NADO

SUBMITTED

Issue: “The rules regarding the use of samples and anti-doping data in research and quality assessment/improvement processes are no longer fit for purpose. . . . The Code Drafting Team intends to expand Article 19 and make corresponding adjustments to Code Articles 6.2 and 6.3 to provide appropriate minimum standards for the use of samples and data in research and to define the scope of research versus other activities involving the analysis of samples and data.”

Recommendation: USADA agrees that Code Article 19 should be modernized, along with Articles 6.2 and 6.3.

It is unclear as to the specific points that this concept contemplates with regard to changes, but it would generally be helpful to better define different types of research. It is also important to differentiate research from the further use of samples for the purposes of answering important questions, which could provide assistance to the athlete regarding the source of a positive test or help to exonerate them. In addition, a single sample could conceivably be used for multiple types of research projects. Further, because new research could involve large data sets such as ADAMS data (e.g., artificial intelligence or other data analytics research), it should be made clear as to what anonymization means when it comes to data associated with a sample, as there are degrees to which samples data can be made anonymous. Specifically, it should be made clear who owns the data in ADAMS and whether it can be accessed for the purposes of anti-doping research. Efforts to coordinate research with global anti-doping samples and data should be encouraged. Also, any research that involves genetic information may need a higher degree of ethics scrutiny due to the sensitivity of the information. Specific safeguards with security of the data and the research should be well thought out. It is also important not to make the barriers to research so high that it discourages research because of bureaucratic challenges. USADA would encourage the drafting team to share more details about the ideas proposed for Article 19 and Articles 6.2 and 6.3 for stakeholder feedback.

Issue: “Reflect the important public interest purposes achieved by publication and ensure the measure is implemented in a harmonized manner globally.”

Recommendation: This would be welcome.

Issue: “Consider whether the publication should be made only with athlete consent where 10.5 applies (no fault or negligence).”

Recommendation: This would be a welcome addition, and this could be accomplished by simply adding Article 10.5 resolutions within Article 14.3.7, with the added condition—when there is no effect on performance.

Issue: “Whether [publication] should be made optional (and therefore subject to a case-by-case assessment) where Code Article 10.6 applies (no significant fault or negligence).”

Recommendation: USADA disagrees with this proposed change. If the purpose is to educate athletes and deter doping behavior while harmonizing outcomes for similar circumstances, publication of sanctions where there was no significant fault or negligence is critical. As described below, with no framework from WADA for imposing sanctions between 0-24 months, results vary significantly. And without publication, they will vary significantly more. Additionally, there will be more limited awareness of the dangers of supplements, coaches, doctors etc. that are often the root cause for these violations. If publication was subject to a case-by-case analysis, the result will inevitably be far fewer publications because that will be the “easier” course of action when athletes are almost always hyper-focused on the publication issue. USADA does not believe fear of privacy regulators (particularly when privacy rules do not prohibit publication in these cases) should dictate what is best for the fight against doping. Privacy rules and regulations should be created within the anti-doping movement to further the fight against doping. Do not let the proverbial tail wag the dog in this scenario.

Issue: “Whether exceptions are required to the mandatory publication of sanctions related to athlete support personnel similar to those set out in Code Article 14.3.7.”

Recommendation: USADA disagrees with providing an exception for publication related to athlete support personnel (ASP). ASP are often the root cause of doping violations and in some cases are at the center of massive doping conspiracies. They have a heightened responsibility and duty of care to athletes. If they have committed an anti-doping rule violation, they need to be held accountable with a public announcement. This is also critical because athletes need to know with whom they are associating and that the athlete can rely on the person from whom they are receiving advice.

## UK Anti-Doping

UKAD Stakeholder Comments, Stakeholder Comments (United Kingdom)  
NADO - NADO

SUBMITTED

We welcome updates to Code Article 5.5. However, we have underlying concerns that ADOs are not permitted to retain whereabouts data for sufficiently long enough to best utilise this in intelligence-led Testing and risk assessing.

We welcome adjustments to Code Article 6.2 and 6.3 to the extent that they reduce barriers to anti-doping research and analysis.

With regards to the proposals concerning publication of anti-doping sanctions:

(i) We agree that Code Article 14.3 should reflect the important public interest purposes achieved by publication and to ensure that the measure is implemented in a harmonised manner globally insofar as domestic data legislation permits.

(ii) We consider the publication of No Fault or Negligence cases to be important to the anti-doping community and Athletes alike. Publication is the only means by which learning and an awareness of such cases is shared. We consider therefore that publication of these cases should remain mandatory on an anonymised basis and that an Athlete’s name and identifying details should only be published with consent.

(iii) For similar reasons, we consider mandatory reporting (without anonymisation) should remain in place for cases of No Significant Fault or Negligence. Publication plays an important part in education, deterrence of Anti-Doping Rule Violations and enforcement of sanctions; an ADO has little prospect of ensuring compliance with a ban without it. We already encounter significant difficulties with the optional publication provisions that exist under the current Code, since public disclosure is often the most contentious Consequence of an Anti-Doping Rule Violation for Athletes. Leaving publication to a case-by-case assessment will create more inconsistency and more litigation.

(iv) We do not consider that there should be exceptions to publication for Athlete Support Personnel. They have significant responsibilities to Athletes and the continued publication of these cases is necessary to send a clear message of accountability across the sporting landscape.

## Anti-Doping Norway

Martin Holmlund Lauesen, Director - International Relations and Medical (Norge)  
NADO - NADO

SUBMITTED

We fully support that art. 5.5 should better reflect that Whereabouts are used in risk assessment and prioritization process necessary for intelligence-led testing.

We support the suggestion related to anti-doping data used for research in so far as the specific proposal will be in line with GDPR and generally accepted ethical research standards and practices.

We see the need for publication of anti-doping sanctions in order to maintain an openness regarding sanctions, and we support a principle of proportionality. We do see that the intended effect of informing the general public without public disclosure can be achieved in less invasive ways. Given restraints in applicable data protection legislation and regulations in some jurisdictions, we would prefer to have a more narrow scope for public disclosure than today, e.g. only international level athletes, or athletes where there is a legitimate public interest in the case. Instead, emphasis should be placed on ensuring access to caselaw, e.g. in an anonymized or pseudonymized format.

We wonder if WADA could develop a module/tool in ADAMS, where Artificial Intelligence is applied to relevant ADAMS-data in order to refine and enhance ADO's testing efforts. If so, it is important that the Code would not become a barrier for such a new tool.

## CHINADA

Yao Cheng, Result Management (China)  
NADO - NADO

SUBMITTED

### Comment 1: We support the amendment of Article 19, 6.2 and 6.3

Recognizing the importance of research in the fight against doping, we support the proposal of expanding the scope of Article 19 (Research). The research on prohibited substances and their metabolic patterns is highly important for testing, investigations and results management conducted by ADOs, so it heavily relies on the support of WADA-accredited laboratories. However, certain concerns have been raised by some of these laboratories when ADOs request their involvement in such research activities without explicit authorization under Article 19. Therefore, it is suggested that Articles 6.2, 6.3 and 19 be amended to encourage and support anti-doping research among ADO and Laboratories.

### Comment 2: Obtaining the parental consent for Minor Athletes' data

As set out in Appendix B.3.1 of the International Standard for Testing and Investigations, the testing authority has responsibility for ensuring, when possible, that the sample collection authority and/or the DCO has any information necessary to conduct a sample collection session with an athlete who is a Minor. This includes confirming wherever necessary, the parental consent for Testing any participating athlete who is a Minor. We do not consider obtaining parental consent prior to sample collection as a necessary prerequisite for testing under this Article. Given that ADOs conduct a large number of sample collections on minor athletes annually, it becomes impractical to obtain parental consent for each individual athlete to be tested. Moreover, should failure to obtain parental consent result in tests suspended? Upholding such a requirement would only lead to the reduction by ADOs of the number of tests conducted on minor athletes. Therefore, we propose loosening this requirement without any further specific regulations in this regard.

## Swiss Sport Integrity

Ernst König, CEO (Switzerland)  
NADO - NADO

SUBMITTED

Issue: "The rules regarding the use of samples and anti-doping data in research and quality assessment/improvement processes are no longer fit for purpose."

Swiss Sport Integrity welcomes a modernization of Art. 19 along with Art. 6.2 and 6.3. Swiss Sport Integrity would like to point out that it is also important not to make the barriers to research so high that it discourages research because of bureaucratic challenges.

Issue: "Public disclosure - in general"

Swiss Sport Integrity welcomes clarifications on public disclosure.

Issue: "Public disclosure - whether it should be made optional (and therefore subject to a case-by-case assessment) where Code Article 10.6 applies (no significant fault or negligence)."

Swiss Sport Integrity disagrees with the proposed change. If the purpose is to educate athletes and deter doping behaviour while harmonizing outcomes for similar circumstances, publication of sanctions where there was no significant fault or negligence is critical. With no framework from WADA for imposing sanctions between 0-24 months, results vary significantly. And without publication, they will vary significantly more. Additionally, there will be more limited awareness of the dangers of supplements, coaches, doctors etc. that are often the root cause for these violations. If publication was subject to a case-by-case analysis, the result will inevitably be far fewer publications because that will be the "easier" course of action when athletes are almost always hyper-focused on the publication issue.

Issue: "Whether exceptions are required to the mandatory publication of sanctions related to athlete support personnel similar to those set out in Code Article 14.3.7."

Swiss Sport Integrity disagrees with providing an exception for publication related to athlete support personnel (ASP). ASP are often the root cause of doping violations and in some cases are at the center of massive doping conspiracies. They have a heightened responsibility and duty of care to athletes. If they have committed an anti-doping rule violation, they need to be held accountable with a public announcement. It is in the public interest that these persons are publicised. This is also critical because athletes need to know with whom they are associating (cf. Art. 2.10) and that the athlete can rely on the person from whom they are receiving advice.

### **RUSADA**

Kristina Coburn, Compliance Manager (Russia)  
NADO - NADO

SUBMITTED

RUSADA supports the Code Drafting Team proposals.

According to the Code article 14.3.7, the minor athlete is a protected person, and it is improper to the disclosure any personal data pretraining to him/her is unacceptable. However, the Code is vague about the circumstances under which the public disclosure can be made.

It would be beneficial to amend the Standard and/or the Code with the provision which explicitly outlines the conditions in which the information related to the minor athletes can be public disclosed or establish the complete prohibition with regard to the public disclosure of the information related to a violation committed by a minor athlete.

### **Anti Doping Danmark**

Silje Rubæk, Legal Manager (Danmark)  
NADO - NADO

SUBMITTED

In Denmark we publish all Anti-Doping rulings and sanctions to create openness and transparency. We therefore highly support the proposals to adjust article 14.3, to reflect the important public interest purposes.

We don't support that the publications only should be made with athlete consent but that it instead should be made optional. Of course with the respect of the individual country's data protection legislation.

It is essential to be seen how the European Court of Justice will rule on the question referred in the near future (2024). These proceedings and the court's guiding principles should definitely be incorporated into the code.

### **Sports Tribunal New Zealand**

Helen Gould, Registrar (New Zealand)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

1. Greater clarity provided to athletes is supported.
2. Minimum standards are appropriate.
3. (i) The publication of names must be proportionate to the circumstances and sanction. (ii) An athlete's consent should be given to publish where no fault or negligence was found. (iii) making publication optional where no significant fault or negligence applies is appropriate.

There should be an amendment to 14.3.1 as athletes who are provisionally suspended should be protected given there is rule 7.4.5; we would prefer no publication at the provisional suspension stage.

#### **Freelance journalist**

SUBMITTED

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

The Drafting team is correct in its line of thinking that publishing detailed orders will bring in the much-needed transparency that these procedures lack at the moment. Budding athletes need to know how a doping case is resolved, what all precautions an athlete has to take in order to avoid the pitfalls, whether prescriptions are sufficient to explain a doping infraction before a tribunal, whether TUEs are necessary, whether the blame could be transferred to a coach, doctor, any other support personnel, or an imaginary "adversary". At the moment different countries have different approaches to publishing the detailed orders or any order at all. Even CAS orders are hard to come by these days! More transparency means more credibility.

#### **International Testing Agency**

SUBMITTED

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

- We support the expansion of the purposes for which whereabouts data ought to be used, in particular recognizing its pertinence in intelligence-led testing and intelligence gathering and analysis. Whereabouts patterns can provide supporting evidence to substantiate suspicions and inform the risk assessment. In parallel with this change, an extension in the retention regime set forth for whereabouts in the ISPPPI would be welcome.

Additionally, the inclusion of a reference in the last part of article 5.5, stipulating the need to destroy whereabouts data when no longer relevant for the designated purposes, may be deemed redundant. This is particularly so considering that such regime is mandated by the ISPPPI (and prevailing data protection laws) for any type of personal data (cf. ISPPPI article 10.3)

- We fully support the modernization of the discipline governing research and permitted activities. This entails regulating more effectively the requirements for various research purposes, also to enable greater transparency and clarity vis-à-vis the athletes. In our view, research on analytical data and doping control information should be further incentivized, avoiding overly burdensome requirements. For instance, alongside the concept of full anonymization, pseudonymization could be explored in certain cases.

Furthermore, we support the idea of secondary guidelines, also addressing ethical considerations (including in relation to the use of artificial intelligence in research activities).

- We do not believe that ASP should be included in the mandatory publications of sanctions exception of 14.3.7 since ADRVs of ASP are often intentional and serious. Moreover, if there is no communication of these kind of sanctions, the satisfaction of 2.10.2 (Prohibited Association) will be even more difficult.

### **Concept #8 – NADO Operational Independence (33)**

#### **Team USA Athletes' Commission**

SUBMITTED

Meryl Fishler, Manger (United States)  
Sport - Athlete Representative (State the name of the athlete body in Organization name)

1. Not sure we have an opinion on this that we should submit other than we support independent NADOs

### **Union Cycliste Internationale**

SUBMITTED

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

If NFs may be involved in testing or results management process, it must be made very clear that they are acting under the responsibility of their NADO and not their IF.

### **World Rugby**

SUBMITTED

David Ho, Senior Manager Anti-Doping Operations (Ireland)  
Sport - IF – Summer Olympic

We would support the proposed changes to improve operational independence for NADOs.

With regards to the proposal of National Federations becoming more involved in testing or in the results management process under the responsibility of NADOs, we would have some reservations with this and would only see this being permitted in exceptional cases with specific agreement from WADA upon the meeting of certain criteria by both the NADO and NF (and we assume the use of delegation agreements). We also wonder whether this may be incongruent with the fact that independent competition organisers are currently unable to conduct testing or results management without delegation agreements. The two groups NFs and competition organisers would seem to need to be dealt with equally.

### **National Olympic Committee and Sports Confederation of Denmark**

SUBMITTED

Mikkel Bendix Bergmann, Legal Advisor (Denmark)  
Sport - National Olympic Committee

#### **Concept #8 – NADO Operational Intelligence**

The Danish NOC believes that National Federations should not have the option to participate in testing or the result management process overseen by NADOs. It is our position that NADOs must maintain complete independence, free from any involvement by National Federations. The proximity between National Federations and NADOs poses a significant challenge to operational independence.

We advocate for consistent criteria across all Anti-Doping Organizations (ADOs), extending the same standards applied to NADOs to other entities such as the International Testing Agency (ITA) and International Federations. Presently, there exists a disparity in the independence criteria demanded for NADOs compared to other ADOs. Harmonizing these criteria is crucial to ensuring a uniform standard of operational independence.

It is imperative to underscore that these recommendations should be implemented with due regard for individual countries' legislation. We recognize that some countries afford greater regulatory powers to national federations, and any adjustments should respect the legal frameworks in place.

### **Botswana Football Association**

SUBMITTED

Boago Diphupu, Mr (Botswana)  
Sport - Other

For easy management NADO must operate independent

### **Sport NZ**

SUBMITTED

Jane Mountfort, Principal Policy and Legal Advisor (New Zealand)  
Public Authorities - Government



This submission is made on behalf of Sport New Zealand, which is the Crown agency responsible for advising the New Zealand government on anti-doping policy and ensuring New Zealand's compliance with the International Convention against Doping in Sport 2005.

Sport NZ awaits further detail before providing comment.

### Council of Europe

SUBMITTED

Council of Europe, Sport Convention Division (France)

Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

#### General remark

The operational independence of NADOs must be significantly strengthened. This applies in particular with regard to legal competence and/or jurisdiction/authority, budgetary control (priority setting and expenditure) and accountability vis-à-vis national and international AD organisations. However, the issue should be internationally (re)considered that national law gives national sports federations their own (more) regulatory powers and establishes these as taking precedence over the WADC.

It is considered that the independence and operational autonomy of NADOs, particularly vis-à-vis the Government and the sports movement, is an essential element of the effectiveness and protection of the anti-doping program.

### COCOM

SUBMITTED

Stephanie Sirjacobs, Legal adviser (Belgium)

NADO - NADO

Les fédérations nationales ne devraient pas être de la responsabilité des ONAD, mais bien de leur fédération internationale. Intégrer les fédérations nationales entraînerait du travail supplémentaire pour les ONAD dans un domaine où la responsabilité est censée être partagée avec les FI.

### Anti-Doping Agency of Serbia

SUBMITTED

Bojan Vajagic, Director's Assistant (Serbia)

NADO - NADO

**Anti-Doping Agency of Serbia strongly supports the possibility for National Federations to be involved in the results management process (as hearing panel in first instance).**

Since the adoption of the first Law on the Prevention of Doping in Sport in Serbia in 2005, a system has been established for NF disciplinary commissions (which meet the requirements prescribed by the Code) to decide in the first instance in the process of determining a violation of anti-doping rules, and for the Anti-Doping Board (as a second instance body) to decide on appeals against these decisions (unless the appeal is submitted to CAS because the athlete is of international rank). That system has been functioning for the past 18 years, it has been accepted in Serbia, it is recognized as a legal solution, and that is why we are advocating that this possibility be left.

### Organizacion Nacional Antidopaje de Uruguay

SUBMITTED

José Veloso Fernandez, Jefe de control Dopaje (Uruguay)

NADO - NADO

No comments. Approved 1st stage.

### NADA

SUBMITTED

NADA Germany, National Anti Doping Organisation (Deutschland)

NADO - NADO

Comment NADA: No involvement of National Federations in testing but the sole authority for all testing (IC and OOC) should be the responsible NADO; respective regulation in the Code would be helpful. National Federations should be obliged to empower the respective NADO to conduct the entire results management process including the adjudication (NADO being the claimant and the athlete the respondent in proceedings before independent disciplinary bodies).

### **Finnish Center for Integrity in Sports (FINCIS)**

Petteri Lindblom, Legal Director (Finland)

NADO - NADO

SUBMITTED

The operational independence of NADOs must be significantly strengthened. This applies in particular with regard to legal competence and/or jurisdiction/authority and accountability vis-à-vis national and international AD organisations.

The independence and operational autonomy of NADOs, particularly vis-à-vis the Government and the sports movement, is an essential element of the effectiveness and protection of the anti-doping program.

### **Sport Ireland**

Melissa Morgan, Anti-Doping Testing and Quality Manager (Ireland)

NADO - NADO

SUBMITTED

Sport Ireland will await more detailed proposals and drafting before reaching a view in this regard.

### **UK Anti-Doping**

UKAD Stakeholder Comments, Stakeholder Comments (United Kingdom)

NADO - NADO

SUBMITTED

We would support increased guidance with regards to NADO operational independence from National Federations, in respect of testing and results management.

In addition, we request guidance from WADA as to NADO operational independence from National Federations in respect of anti-doping investigations.

### **Anti-Doping Sweden**

Jessica Wissman, Head of legal department (Sverige)

NADO - NADO

SUBMITTED

Operational independence of NADO's is a safeguard of the integrity of the anti-doping activities of the NADOs and thus the credibility of the activities. ADSE welcome a more detailed description in the Code of what constitute NADO Operational Independence, in light of the informal and non-binding character of the current descriptions (WADA Guide on the Operational Independence of NADOs)

A graded approach could be considered, offering greater flexibility in very small ADO's/NADO's in small countries, where in practice, available staff/human resources/knowledge & expertise may be a sparse resource, making the full independence of NADO's very difficult in practice.

ADSE suggest that the operational independence requirement be extended to all anti-doping activities, including in the anti-doping activities in ADO's other than NADO's.

### **Japan Anti Doping Agency**

YUICHI NONOMURA, Result Management (??)

NADO - NADO

SUBMITTED

Yes to "more details..to clarify the principles and mandatory requirements". It is imperative to mention NFs should not

be involved in Test Planning, however it is their responsibility (or cooperation is a must) share the competition schedule, practice schedule (particularly teams), otherwise it is difficult to plan OOCT effectively. For Results Management, the cooperation by NFs for investigations is a must.

### **ONAD Communauté française**

Julien Magotteaux, juriste (Belgique)  
NADO - NADO

SUBMITTED

#### 8) NADO Operational Independence:

We consider that the independence and operational autonomy of NADOs, particularly vis-à-vis the Government and the sports movement, is an essential element of the effectiveness and protection of the anti-doping program.

However, before deciding whether or not to propose more details in the Code regarding the principles and mandatory requirements relating to the operational independence of NADOs, a prior impact assessment must be carried out.

Indeed, if requirements were to increase, it is important to prevent these from leading directly or indirectly to a need to further increase resources.

Furthermore, there is also a question of equity because the program is global and, at present, some NADOs are already having difficulty remaining compliant with the current requirements of the Code.

### **Anti-doping Bureau of Latvia**

Mārtiņš Dimants, Director (Latvia)  
NADO - NADO

SUBMITTED

LAT-NADO advice to extend the review even further and mentioning at what level state institutions can involve in ADO functions, for example ask ADO to harmonize work travels with possibility to prohibit ADO staff to travel, affect NADO decisions on spending budget on administrative, or maintenance expenses etc (on State budget saving purposes).

### **Swiss Sport Integrity**

Ernst König, CEO (Switzerland)  
NADO - NADO

SUBMITTED

Issue: "NADO operational independence."

Swiss Sport Integrity believes that it is outmost crucial for a credible fight against doping worldwide that WADA and all ADOs are operationally independent. Any further clarity in principles and requirements regarding operational independence should apply to WADA and other ADOs, including IFs and NADOs. All stakeholders will benefit from a more uniform understanding and consistent measure of being 'independent from government and sport vis-à-vis their operational activities and decisions'.

### **RUSADA**

Kristina Coburn, Compliance Manager (Russia)  
NADO - NADO

SUBMITTED

The National Federation might be involved in testing or in results management only by providing information useful for testing planning and results management (e.g., the competition schedule, training scheduled etc.).

### **Sport Integrity Australia**

Chris Butler, Director, Anti-Doping Policy and International Engagement (Australia)  
NADO - NADO

SUBMITTED

Given the importance of this requirement, we **agree** there can only be benefit from further clarity around the requirements for NADO operational independence and would support the exploration of amendments in this regard as long as the requirement for independence remains at the operational level.

However, the application of the rules (once clarified) may generally be better described in comments or guidance materials (such as the existing WADA Guide for operational independence of NADOs). Our limited challenges/questions around Article 20.5.1 centred on NADO staff being offered short term or contract positions with MEOs (what are the definitions of management and operations role). For example, could a NADO staff member perform a part time medical adviser role for an MEO? Can a staff member also take a games time leadership role at a major event (Chef de mission etc)?

#### Dopingautoriteit

Robert Ficker, Compliance Officer (Netherlands)  
NADO - NADO

SUBMITTED

#### 13.2. Recommendations

Doping Authority considers the operational independence of NADOs a key element in the Code and of the anti-doping system. The current wording of Article 20.5.1 Code does not sufficiently safeguard a NADOs operational independence. Consequently the current Article 20.5.1 needs to be expanded. We refer to our general comments on the positions of NADOs.

#### Drug Free Sport New Zealand

Nick Paterson, Chief Executive (New Zealand)  
NADO - NADO

SUBMITTED

The drafting team must be clear this is not general independence, complete independence or anything else, but rather **operational** independence. A NADO must be **operationally** independent from government and sport.

To be clear, a NADO is often **not** financially independent from government, as that's the main source of funding. But so long as there are measures in place to protect the operational independence i.e. so the government can't withdraw funding month to month, or even year to year, if the NADO makes an operational decision someone in government doesn't like.

Characteristics:

- Board appointed ideally by a non-political person or by the Board itself. Can be appointed by the Minister if the right safeguards in place e.g. skills matrix
- Board should be free of conflicts with sport and government if possible
- CE appointed by the board. CE cannot be removed by government (or sport). The CE then appoints and removes staff
- Funding stream is granted strategically i.e. over a 3-5 year basis, based on a strategic requirement of govt (if that's the funding) i.e. to implement the WADC and be compliant with it
- NADO CE and Board then has autonomy to spend the money each year as they see fit without authorisation/approval from government (if that's the source of funding)
- NADO CE/Board report back to government/ funders annually on progress etc, but report back, not seeking approval etc.

- All operational decisions are made without discussion with the Board – who to educate or who/when to test, and whether or not to commence RM etc
- The only things that go to the Board are strategic i.e. if there is significant financial or reputation risk
- The Board sets the strategy of what the next 5 years' target/aim/direction is
- The Government sets the overall purpose of the organisation but no more.

## NADA India

NADA India, NADO (India)  
NADO - NADO

SUBMITTED

- Strengthen NADO operational independence by clearly defining principles and mandatory requirements in the Code.
- Limit National Federations' involvement in testing or results management processes to minimize conflicts of interest.
- Establish an independent oversight body to monitor NADO activities and ensure compliance with operational independence standards.
- Allocate a dedicated budget to support NADOs in maintaining operational independence, including training programs for personnel.

## KADA

Shinhyeong jang, Legal / manager (Korea)  
NADO - NADO

SUBMITTED

NADO: National Anti-Doping Agency, operational independence

### A. Changes in the concept of 'NADO Operational independence' following the revision of the WADA Code

o There was no concept of 'NADO operational independence' in 2009, but the 2015 Code stipulates that 'NADO will be independent in operational decisions and activities,' specifying that 'independence' is a key element necessary for NADO's effective national anti-doping activities. Furthermore, the 2021 Code ensures independence in operational decisions and activities from the government and sports and strengthens NADA's operational independence by specifically indicating the relevant organizations.

**[2021 WADC Article 20.5.1]** To ensure the independence of operational decisions and activities from sports and governments, international federations, national sporting bodies, major international competition bodies, National Olympic Committees, National Paralympic Committees, or sports or anti-doping bodies. It includes prohibiting the person carrying out the operation or activities of the government department in charge of its work from any involvement in its operational decisions and activities.

### B. KADA's operational independence and participation of domestic sports organizations in domestic anti-doping activities

o Under the current regulations, domestic sports organizations have no involvement in the operation of KADA's anti-

doping activities. However, WADA's revised direction is deemed to be intended to ensure the smooth operation of anti-doping activities at the domestic level by ensuring KADA's operational independence and allowing domestic sports organizations to participate in some of the doping testing or result management activities.

### **C. Participation in domestic anti-doping activities by domestic sports organizations**

#### **o Review of the application of WADA Code to domestic sports organizations**

- To effectively implement the WADA Code, KADA is enacting and implementing the Korea Anti-Doping Rules that concretized the WADA Code at the national level and by ensuring that the Korea Sports Council and the Korea Sports Association for the Disabled comply with the Korea Anti-Doping Rules and the WADA Code at the same time, enabling WADA Code to be applied to organizations and registered athletes through the Korea Anti-Doping Rules.

#### **[Main roles and responsibilities of competition organizations according to the 2021 Korea Anti-Doping Rules]**

(1) Competition organizations must **comply with the World Anti-Doping Code (WADA CODE), International Standards (IS), and Korea Anti-Doping Rules (KADR).**

(2) In accordance with the obligation to comply with the Korea Anti-Doping Rules, competition organizations must specify matters related to compliance with these regulations in their articles of **incorporation or codes** so that they can be **applied to athletes, athlete support personnel, and other related parties.**

(3) Competition organizations must **establish their own rules for participating in competitions or activities conditional on their** agreement with the anti-doping organization's **results management.**

(4) Competition organizations should provide appropriate support for implementing the Anti-Doping Committee's **testing program.**

(5) Competition organizations **cooperate with the Anti-Doping Committee** to regulate athletes, etc. **Anti-doping education** must be implemented.

(6) Competition organizations must actively assist **anti-doping organizations with investigative authority** You must **cooperate.**

o For reference, the National Federation (NF) is a domestically representative subsidiary of the International Federation (IF) and is responsible for complying with the roles and responsibilities of the NF stipulated in the IF Anti-Doping Rules.

#### **o Additional participation of domestic sports organizations is not necessary to operate KADA anti-doping activities.**

- To provide appropriate support to competition organizations in Korea, such as the preparation of a doping control room, KADA obligates them to disclose some information on test execution, observe hearings during the result management process, and send and confirm notifications and decisions to be partially involved in testing and result management so that KADA's anti-doping activities can reach athletes through competition organizations.

### **D. Improvements should be made to ensure that domestic sports organizations actively participate in NADO's anti-doping education program and provide education.**

o KADA must plan, implement, evaluate, and activate anti-doping education per the 'International Standard for Education' (Article 20.5.8. of the Code). Meanwhile, domestic sports organizations must strengthen their role as joint implementers of anti-doping education programs by playing a key role in the management and development of athletes and coaches.

## E. Opinions on the amendment

**o It must be clearly stated that the cooperative operation of anti-doping education with NF does not exclude NADO's operational independence.**

- The current regulations on NADO's operational independence can be interpreted as NADO taking on all roles regarding anti-doping activities, especially anti-doping education. In this sense, improvements are needed to enable cooperation regarding education.

- It is necessary to state in the operational independence clause (Article 20.5.1) that cooperative operation between NADO and NF for the smooth implementation of anti-doping education at the domestic level is not an activity excluded from NADO operational independence.

### USADA

SUBMITTED

Allison Wagner, Director of Athlete and International Relations (USA)  
NADO - NADO

Issue: "Proposing more details in the Code to clarify the principles and mandatory requirements of NADO operational independence. In particular, the Code Drafting Team wishes to consider whether and to what extent National Federations may be involved in testing or in the results management process under the responsibility of NADOs."

Recommendation: USADA believes it is important for WADA and all ADOs to have operational independence. Any further clarity in principles and requirements regarding operational independence should first and foremost apply to WADA and then apply to other ADOs, including IFs and NADOs.

### Anti-Doping Norway

SUBMITTED

Martin Holmlund Lauesen, Director - International Relations and Medical (Norge)  
NADO - NADO

We support the views expressed by WADA's NADO EAG on this item.

Operational independence of NADO's is a safeguard of the integrity of the anti-doping activities of the NADOs and thus the credibility of the activities. We welcome a more detailed description in the Code of what constitute NADO Operational Independence, in light of the informal and non-binding character of the current descriptions (WADA Guide on the Operational Independence of NADOs).

A graded approach could be considered, offering greater flexibility in very small ADOs/NADOs in the smallest countries.

We suggest that the operational independence requirement be extended to all anti-doping activities, including in the anti-doping activities in ADOs other than NADOs as is the case with e.g. AIU and BIU.

**Comment 1: Operational independence articles in ISRM have been proven to be effective in the implementation**

The domestic anti-doping activities conducted by NADOs, including education, Testing, and results management, rely heavily on the support and cooperation of national federations (NFs). The key to ensuring the operational independence of the NADOs lies in its distinct separation from the government and other sports organizations in personnel and decision-making, rather than mere isolation in anti-doping activities. Code Article 20.5.1 explicitly outlines NADO's operational independence, and the International Standard for Results Management further specifies the operational independence of the hearing body and the substantive independence of the appellate body, which has been proven to be effective in implementation.

**Comment 2: We think it's better not to restrict the involvement of national federations.**

In the process of Code revision, it is crucial to fully consider the unique circumstances of the signatories. This involves respecting their national legal systems, sport management systems, practical implementation and originality. It is also important to understand the complexity of results management, especially in terms of sanctions, hearings and appeals, instead of requiring all signatories to apply exactly the same model for results management. No matter what model is used for results management, the only requirement is that the process, procedures, and decision-making shall be in compliance with the Code and the International Standard for Results Management. Therefore, we do not suggest that the operational independence of NADOs be linked with the involvement of national federations, nor do we suggest that the involvement of national federations be restricted in testing and results management.

**Comment 3: The unique circumstances of different NADOs shall be respected**

Some NADOs have rich experience and effective strategies in mobilizing the engagement of other entities to actively participate in and provide support for anti-doping activities. For instance, given China's vast territory, a large population, complex administrative divisions, a huge number of athletes and a large community of sports participants, it's impossible for CHINADA with its limited number of staff to meet the huge demand of anti-doping work. To this end, CHINADA has promoted the establishment of anti-doping agencies at the provincial level and dedicated anti-doping departments in individual NFs. Although these agencies and departments are not affiliated with CHINADA, their anti-doping work is guided, supervised and evaluated by CHINADA and therefore they can be regarded as its branches and an extension of the anti-doping activities carried out by CHINADA at the local level and specific sports. Take the provincial anti-doping agencies as an example. Their anti-doping responsibilities include publicity and education, sample collection by personnel who meet the International Standard for Testing and Investigations delegated by CHINADA, investigating ADRVs, supervising the implementation of sanctioning decisions for ADRVs, strengthening the prevention and control of doping risks in food, medicines and nutritional supplements, participating in the governance of doping at the source, and supervising anti-doping work carried out by public sports organizations and athlete management units. Anti-doping education activities conducted by local anti-doping agencies need to be coordinated with CHINADA, and those agencies which engage in the doping control activities are considered to be third parties delegated by CHINADA. CHINADA has oversight over these agencies. Specifically, CHINADA guides, evaluates and supervises these agencies to ensure that their anti-doping activities are conducted in accordance with the Code and international standards. These agencies and departments have greatly enhanced the effectiveness and coverage of anti-doping activities, significantly increased anti-doping awareness and competence among athletes and their support personnel, resulting in a growing educational community. There has been a steady increase in the number of doping tests while the number and proportion of ADRVs have declined markedly.

To sum up, we suggest that in studying NADOs' operational independence and issuing the relevant guidelines, the drafting team conducts extensive research, considers the characteristics and practical work of different signatories, absorbs the good experiences and practices of NADOs, focuses on how to support NADOs to continuously expand their influence and the coverage of anti-doping activities in a way that is not limited to elite athletes, and try to avoid the "one-size-fits-all" practice that would suppress NADOs' enthusiasm, which would be detrimental to the implementation of anti-doping activities at the national level.



**Anti Doping Danmark**

Silje Rubæk, Legal Manager (Danmark)  
NADO - NADO

SUBMITTED

We don't support that National Federations should have the option to be involved in testing or in the result management process under the responsibility of NADO's. There should be no involvement from the National Federations and the NADO's should maintain complete independence. The National Federations are too close to the athletes and NADO's, and it will challenge the operational Independence.

The same criteria for NADO's should also be extended to all ADO's like for example ITA and International Federations. Presently, the criteria that is demanded for the NADO is not the same for the ADO's.

The above mentioned should of course be under the respect of the individual country's legislation, which in some countries gives the national federations more regulatory powers.

We also think that it is a challenge that NADO Independence only is regulated through a general article (supported by a non-binding guide). This should be reconsidered.

**Caribbean Regional Anti-Doping Organization**

Marsha Boyce, Communications & Projects Coordinator (Barbados)  
NADO - RADO

SUBMITTED

It is recommended that in any amendments to the principles/mandatory requirements relating to operational independence, consideration be given to countries/nations with small populations.

**WADA NADO Expert Advisory Group**

Martin Holmlund Lauesen, member (Norge)

Other - Other (ex. Media, University, etc.)

Operational independence of NADO's is a safeguard of the integrity of the anti-doping activities of the NADOs, which strengthens the credibility and reliability of the NADO's activities and protect those activities from interests other than those of clean and honest sport. Operational independence is therefore key to raising the standard of anti-doping activities, and an important factor for the credibility of World Anti-Doping Program (WADP).

*NADOs' Operational Independence* is sparsely described in mandatory provisions of the WADP, however, limiting the relevant provisions to cover only one article of Code (WADC art. 20.5.1), which is then unfolded in WADA Guidelines on operational independence of NADO. It seems problematic that such an important principle is very broadly formulated in an article, which leaves a wide room for interpretation. We therefore suggest that the obligations are further fleshed out in the Code or other legally binding/mandatory documents.

A graded approach could be considered, offering greater flexibility in very small ADOs/NADOs in small countries, where in practice, available staff/human resources/knowledge & expertise may be a sparse resource, making the full independence of NADOs very difficult in practice.

Currently, *operational independence* as a safeguarding mechanism for the integrity of anti-doping activities from conflicting interests is only offered to anti-doping activities of NADOs, leaving out all other ADOs. We find that similar safeguards should be offered to *anti-doping activities in all ADOs*, including ADOs other than NADOs (e.g. as is the case with the Athletics Integrity Unit). This would also further increase the credibility of the WADP. We therefore suggest that operational independence of anti-doping activities become mandatory for all ADOs, and that the scope of operational independence thus is extended.

The following could serve as inspiration for elements to be included in Operational Independence of NADOs:

***NADOs' Operational Independence:***

A NADO's operational independence from government and sports, is meant to ensure that the NADO is free from influence from government and sports in its operational decisions, i.e.:

- either by ensuring that board members (/member of the oversight body), if not prohibited from holding office in Sport and Government, cannot in any other form receive instructions from or be guided by the priorities of Sports or Government in their roles as members of the oversight body;
- or by ensuring that neither sport nor government can instruct the CEO and/or the employees in operational matters related to Anti-Doping, neither directly nor through the board/oversight body.

*[Comment: Depending on the structure of the NADO, including the role of the oversight body (board) and relation between oversight body and operational level, safeguards to ensure Operational Independence can be placed at different levels; either by ensuring that the oversight body is separated from sport and government in operational decisions, or by ensuring that the oversight body cannot take part in any operational decisions.]*

In either case, the operation independence of a NADO includes, but should not be limited to, ensuring that the operational level of the NADO:

- has full autonomy to make decisions related to any part of the *Doping Control*<sup>[1]</sup>, including be ensuring that it:
  1. is free of influence from sport and governments in decisions on who, when and where to test, who to include in the RTP and TP, who to include as National Level-Athletes, and where to prioritize testing and education resources;
  2. is free of influence from sport and governments in decisions related to whether or not to investigate any indications of or charge a potential ADRV, issue a provisional suspension, record a Whereabouts Failure or grant a TUE;
- is free of interference from sport and governments in decisions related to prioritization of the allocation of the

budget throughout a full budget year, but not necessarily the size of the budget, as long as there is sufficient budget for adhering to obligations under the Code and International Standards; and

- has reporting obligations in a format that does not jeopardize the integrity of the national antidoping program, including directly or indirectly disclosing the priorities at individual, discipline or sporting level.

[Comment: This does not prevent the NADO from delegating all or any parts of the Doping Control process to a third party, nor does it allow the NADO to interfere in operational decisions in bodies which according to the Code or International Standards should be operationally (and/or institutionally) independent from the NADO *inter alia* Hearing and Appeal Panels.]

Furthermore, the NADO shall ensure:

- employment safeguards for the CEO of the NADO to avoid interference in operational activities through coercion;
- full authority of the CEO of staff replacements, including for employed and voluntary SCP, albeit employment safeguards should also be in place for staff in order to avoid replacement of staff as a result of the appointment of a new CEO; and
- a conflict of interest-policy, which covers any board member, employee or volunteer, and which ensures that they in their NADO-function work solely in the interests of the NADO.

[1] See WADC definition: «**Doping Control:** All steps and processes from test distribution planning through to ultimate disposition of any appeal and the enforcement of *Consequences*, including all steps and processes in between, including but not limited to, *Testing*, investigations, whereabouts, *TUEs*, *Sample* collection and handling, laboratory analysis, *Results Management* and investigations or proceedings relating to violations of Article 10.14 (Status During *Ineligibility* or *Provisional Suspension*)»

#### Freelance journalist

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

As long as governments are funding NADOs, complete independence will remain a non-starter. There cannot be much role for National federations except in suggesting ways and means to improve testing, target-testing, compilation of Registered Testing Pools (RTPs), emphasizing the need to have more testing, especially testing at the lower levels and in providing their domestic competition calendars and training programmes especially prior to a major multi-discipline games or World championships. National Federations, it has been noticed, are invariably "protective" towards their leading athletes if they are caught in the dope net. This may be true of governments, and thereby, NADOs, too. It would be advisable to keep the present arrangement to continue, giving the federations the advisory role in relation to testing, RTP, training camps etc, and providing the freedom to the NADOs to plan and execute their programme without being unduly disturbed by the federations.

#### SEARADO

Gobinathan Nair, Director-General (Singapore)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

There need to be greater clarity within the Code with regards to the term 'Operational Independence'. Beyond the Operational Independence pertaining testing and results management, there ought to be OP in terms of budget and procurement processes. As many NADOs are funded by the government, the element of accountability need to be further expanded

### Concept #9 – Uncorrectable Non-Conformities (28)

#### Team USA Athletes' Commission

Meryl Fishler, Manger (United States)  
Sport - Athlete Representative (State the name of the athlete body in Organization name)

SUBMITTED

1. What type of “failures undermine public confidence” Can you provide some examples?

### World Rugby

SUBMITTED

David Ho, Senior Manager Anti-Doping Operations (Ireland)  
Sport - IF – Summer Olympic

We would support any amendment to the ISCCS that strengthens the compliance process and WADA's ability to enforce appropriate and reasonable sanctions that help to raise worldwide standards. Non-conformities which are no longer capable of being corrected should still be recognised as non-conformities provided they are judged in accordance with the rules in force at the time. Some consideration may however need to be given to situations where officials deemed responsible for the non-compliance may have changed in the intervening period (provided this change was not as a direct consequence of a deliberate attempt to absolve the organisation of blame).

### Botswana Football Association

SUBMITTED

Boago Diphupu, Mr (Botswana)  
Sport - Other

- we need to trust the process
- we need results
- growth
- transparency
- purpose

### NZ Rugby

SUBMITTED

Rebecca Giordano, Senior Legal Counsel - Regulations & Compliance (New Zealand)  
Sport - Other

We support the introduction of the concept of “uncorrectable non-conformities” as well as the proposed limitations.

### International Tennis Integrity Agency

SUBMITTED

Nicole Sapstead, Senior Director, Anti-Doping (United Kingdom)  
Sport - Other

The ITIA support this given it is essential that non-compliance with the rules has a consequence.

### Sport NZ

SUBMITTED

Jane Mountfort, Principal Policy and Legal Advisor (New Zealand)  
Public Authorities - Government

This submission is made on behalf of Sport New Zealand, which is the Crown agency responsible for advising the New Zealand government on anti-doping policy and ensuring New Zealand's compliance with the International Convention against Doping in Sport 2005.

Sport NZ reserves its response until seeing detailed proposals.

### Council of Europe

SUBMITTED

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

## Note

It is suggested that this change be made cautiously and carefully. At the same time, not only financial consequences should be considered.

Definition/Requirements should be clearer.

## COCOM

Stephanie Sirjacobs, Legal adviser (Belgium)  
NADO - NADO

SUBMITTED

De manière générale, les règles de non conformité n'étaient-elles pas déjà assez strictes ? Et pour le 2e tiret (confiance du public), est-ce que le risque n'est pas de pouvoir tout mettre dedans ? Et pour le dernier tiret, des sanctions financières ne mettraient-elles pas à mal les petites ONADS et leur budget ? à moins que ce soit à l'Etat de payer? l'AMA devrait justifier ça par des cas concrets qui nous permettraient de mieux comprendre le problème. Et les sanctions financières ne sont pas des moyens raisonnables pour arriver au but de conformité et devraient être évitées.

## Organizacion Nacional Antidopaje de Uruguay

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

SUBMITTED

No comments. Approved 1st stage.

## NADA

NADA Germany, National Anti Doping Organisation (Deutschland)  
NADO - NADO

SUBMITTED

It is suggested that this change be made cautiously and carefully. Definition/Requirements should be clearer.

## Anti-Doping Sweden

Jessica Wissman, Head of legal department (Sverige)  
NADO - NADO

SUBMITTED

ADSE assess that consequences for uncorrectable (historic) non-conformities needs to be considered thoroughly. Definition and requirements should be clearer.

## Sport Integrity Australia

Chris Butler, Director, Anti-Doping Policy and International Engagement (Australia)  
NADO - NADO

SUBMITTED

We **agree** the introduction of text to deal with uncorrectable non-conformities will benefit WADA and the anti-doping community. The limits and notes from the Drafting Team (based on previous feedback received from stakeholders) are supported and are important elements to be included.

## Drug Free Sport New Zealand

Nick Paterson, Chief Executive (New Zealand)  
NADO - NADO

SUBMITTED

**We support the concept where the conduct** is deliberate. In addition WADA should take an educative and

collaborative approach for ad hoc uncorrectable non-conformities.

### **Sport Ireland**

Melissa Morgan, Anti-Doping Testing and Quality Manager (Ireland)  
NADO - NADO

SUBMITTED

In principle this seems appropriate and Sport Ireland awaits more detailed proposals in this regard.

### **USADA**

Allison Wagner, Director of Athlete and International Relations (USA)  
NADO - NADO

SUBMITTED

Issue: "Deliberate failures to comply with one or more critical requirements; and Failures which undermine public confidence in the efficacy of the fight against doping in sport."

Recommendation: These are important issues, particularly if they impact the integrity of competitions. WADA should focus on compliance issues that impact or create room for doping. Note, "failures which undermine public confidence . . ." is vague and potentially unenforceable except in the most egregious cases.

### **Anti-Doping Norway**

Martin Holmlund Lauesen, Director - International Relations and Medical (Norge)  
NADO - NADO

SUBMITTED

We support the views expressed by the NADO EAG

### **UK Anti-Doping**

UKAD Stakeholder Comments, Stakeholder Comments (United Kingdom)  
NADO - NADO

SUBMITTED

These are important issues, particularly if they impact the integrity of competitions. WADA should focus on compliance issues that impact or create room for doping. Also, challenges may be experienced proving intent, defining "failures which undermine public confidence" and in establishing consistent fines commensurate with the specific Uncorrectable Non-Conformity.

### **Japan Anti Doping Agency**

YUICHI NONOMURA, Result Management (??)  
NADO - NADO

SUBMITTED

We agree with the suggestion.

### **ONAD Communauté française**

Julien Magotteaux, juriste (Belgique)  
NADO - NADO

SUBMITTED

9) Uncorrectable non-conformities:

In relation with this concept, we would agree to limit the procedure to :

- deliberate failures to comply with one or more critical requirements.; and

- failures which undermine public confidence in the efficacy of the fight against doping in sport.

For the determination of the scope of application, the two conditions would therefore be cumulative. Moreover, the notion «deliberate» must be strictly and well defined as it is an exception. Finally, the notion of “failures which undermine public confidence in the efficacy of the fight against doping in sport” is potentially very broad. It may need to be clarified and limited to cases of organized cheating, with a willingness to cheat.

We would also agree that :

- the non compliance would be determined according to the requirements of the Code or an International Standard in place at that time and so there will be no retroactive application of subsequently introduced rules ;

- any non compliance for which the statute of limitations has expired would be excluded from the scope of application of the procedure; and

- save in exceptional cases, the consequences for such non-compliance would be financial in nature.

#### **Dopingautoriteit**

Robert Ficker, Compliance Officer (Netherlands)  
NADO - NADO

SUBMITTED

#### *14.2. Recommendations*

The approach sounds plausible but we await the specific proposals.

#### **Anti Doping Danmark**

Silje Rubæk, Legal Manager (Denmark)  
NADO - NADO

SUBMITTED

We think that it is crucial for WADA to have the right tools when being confronted with non-conformities. We therefore support the concept of “uncorrectable non-conformities” as proposed in the concept. WADA should have all the right tools especially when the non-conformities are deliberately and severe in nature.

#### **KADA**

Shinhyeong jang, Legal / manager (Korea)  
NADO - NADO

SUBMITTED

Uncorrectable Non-Conformities

#### **A. In favor of creating a ‘new category’ to strengthen the WADA Code Compliance system**

o The purpose of introducing the new concept is to strengthen the compliance system.

#### **B. Government supervision is needed to strengthen the practical WADA Code system.**

o Compliance with the WADA Code by anti-doping organizations is ultimately a domestic level activity for the government to comply with the UNESCO Convention. When the anti-doping organization fails to resolve matters of code compliance related to 'Uncorrectable Non-Compliance' (establishing a domestic law system that is compatible with the code system, demands for changes in the overall domestic sports ecosystem, etc.), there is a need for an improvement to strengthen the code compliance system through intervention at the government level during the

code compliance monitoring process.

(ISTUE Related)

Clarify when a prospective TUE begins

## A. Improving unclear standards for domestic and international TUE approval timing

### o Clarification of TUE 'time of approval' code

- The domestic TUE decision uses the time of TUE approval as the decision date, and the approval period is calculated from this. However, if the standards for the time of approval are applied differently for each country, confusion can arise under the protocol system in which domestic TUE approval can be mutually recognized overseas. Since this is aggravated and issues of fairness arise, the 'approval point' needs to be explicitly set in standards or regulations.

#### CHINADA

Yao Cheng, Result Management (China)

NADO - NADO

SUBMITTED

#### Comment:

We highly recognize WADA's efforts in maintaining the World Anti-Doping Program, in particular the consistency of its rules. However, we believe that the fight against doping cannot rely solely on ADOs and sports organizations; it also requires the support of governments, other social organizations and the public. The significance of anti-doping legislation lies not only in authorizing and supporting the work of NADOs, but more importantly, it is for governments to co-ordinate and mobilize resources from all sides, to strengthen the source control of doping, to combat smuggling, illegal manufacturing and trafficking of prohibited substances, and to prevent the availability of doping to the athlete community and athlete support personnel. Due to the differences in legal systems, social structures and cultural traditions, it is impossible for all the countries to adopt the same model in their anti-doping legislation. The Code requires that ADO's operation and decision-making be independent of the government, while also requiring the ADO to influence the government to modify legislation. These two goals may conflict with each other. It would be unfair to determine a NADO non-compliant with the Code just because of some potential conflicts between anti-doping legislation and the Code, as they may have very limited influence over the government or legislatures. Besides, if the review criteria set by WADA for anti-doping legislation are too strict, it could inadvertently pressure the government to reduce anti-doping legislation or prompt ADOs to hinder the enactment of such legislation, which would be detrimental to the government actively getting involved in the fight against doping. Without the active support of the government, it would be impossible to achieve success in the fight against doping in sports.

#### Swiss Sport Integrity

Ernst König, CEO (Switzerland)

NADO - NADO

SUBMITTED

Issue: "Uncorrectable Non-conformities - Deliberate failures to comply with one or more critical requirements; and Failures which undermine public confidence in the efficacy of the fight against doping in sport."

These are important issues, particularly if they impact the integrity of competitions. WADA should focus on compliance issues that impact or create room for doping. Also, challenges may be experienced proving intent (i.e., 'deliberate') and 'Failures which undermine public confidence' and in establishing consistent fines commensurate with the specific Uncorrectable Non-Conformity.



**NADA India**

NADA India, NADO (India)  
NADO - NADO

SUBMITTED

- Support the introduction of "uncorrectable non-conformities" for deliberate and severe violations.
- Specify criteria for determining non-compliance, ensuring a fair and transparent process.
- Leverage technology for real-time monitoring and reporting of non-conformities, enabling swift intervention.
- Establish a dedicated fund to address financial consequences resulting from non-compliance, with an emphasis on the severity and intentional nature of the violation.
- Implement a periodic review mechanism to ensure the relevance and effectiveness of the "uncorrectable non-conformities" concept.

**Freelance journalist**

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

Fines may not deter organisations. The recent example of the Olympic Council of Asia (OCA) is a case in point. Perhaps there might be very little else that could have been contemplated, but it showed that monetary sanctions may not work in all cases.

**International Testing Agency**

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

SUBMITTED

We support this Concept.

**WADA NADO Expert Advisory Group**

Martin Holmlund Lauesen, member (Norge)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

While not opposing the concept, consequences for uncorrectable (historic) non-conformities needs to be considered thoroughly.

While recognizing the key objective of compliance (as per the ISCCS), as ensuring that Signatories deliver Anti-Doping Programs within their respective spheres of responsibility that meet the requirements of the Code and the International Standards, so that there is a level playing field wherever sport is played, it is often communicated as having a dual role: Increasing the quality of the programs, and provide incentives to correct and deter non-conformities. In practice the latter role is divided in two separate roles, correcting the current non-conformities and preventing future non-conformities through deterrence.

The question is whether the distinction between the underlying communicated roles could be strengthened and embedded in the Code and the ISCCS, so that it is clearer that the objective (meeting the requirements of the Code and Standards) are achieved through 1) increasing quality, 2) incentives to correct non-conformities and 3) deterring future possible non-conformities through consequences.

Our understanding is that the goal of addressing uncorrectable non-conformities is to allow for such deterrence effect by applying (save in exceptional cases, solely financial) consequences for the most severe historic cases.

Given that the goal in these cases would be limited to the deterrence effect, we have the following comments:

1. The procedure should be limited to cases *which are both* deliberate failures to comply with one or more critical requirements *and which at the same time* undermine the public confidence in the efficacy of the fight against doping in sport (i.e. both conditions should be fulfilled, and the failure to comply with one or more critical requirements should not in itself be sufficient to initiate the procedure of a historic case).
2. The non-compliances should be determined based on the Code and standards in place at the time of the infraction (i.e. we agree that application should not be retroactive based on subsequently introduced rules)
3. A statute of limitations needs to be determined. The statute of limitations currently embedded in the Code only apply to ADRVs, not on non-compliances.
4. We are hesitant as to the possibility of non-financial consequences for uncorrectable non-conformities, an indicative list of such exceptional cases should be provided, to allow an assessment of the proportionality.

## Other Comments / Suggestions (27)

### Union Cycliste Internationale

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

SUBMITTED

5.6.1 retired athlete returning to competition: clarification should be made that it does not apply to return in amateur, master event category

Article 10.7.2 : explore the possibility to adjust the the sanction regime, in particular when it comes to inadvertent doping (ex: wrong medication)

### ISU

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

SUBMITTED

#### 1. PROTECTED PERSON:

In relation to a high visibility case, the ISU has had the opportunity to deal with the provisions of Art. 10.6.1.3 and the definition of No Significant Fault or Negligence under the 2021 WADA Code and the corresponding ISU ADR.

Under that definition:

“The *Skater* or other *Person's* establishing that any *Fault* or *Negligence*, when viewed in the totality of the

circumstances and taking into account the criteria for *No Fault* or *Negligence*, was not significant in relationship to the anti-doping rule violation. Except in the case of a *Protected Person* or *Recreational Skater*, for any violation of Article 2.1, the *Skater* must also establish how the *Prohibited Substance* entered his system.”

That definition introduces a facilitated burden of evidence for Protected Persons, i.e. athletes who have not reached 16 years old at the time of the ADRV.

The ISU understands the wish to provide a higher level of protection for individuals whose judgment and cognitive faculties may be different from adults. This is in particular justified where these young athletes are dependent upon adults (family, coaches or physicians) who may ultimately and factually be responsible for the ADRV. Apart from that, it is also known that teenagers are sometimes hyper-rational and therefore more likely to take risks based on probabilities, that is without consideration for the fact that a probability does not mean that it will not happen this time or may not happen the very next time.

The real question is therefore related to the state of mind of very young athletes and their ability to determine themselves in relation to a risky situation. This is a question of fault, that it be No Fault or No Significant Fault or Negligence and not a question regarding the facts of a specific matter. Indeed, the determination and evidence of source, is a purely factual question that does not differ between an adult, a teenager or a child, an individual with or without good judgement. It is part of the question whether a certain event may have caused a certain consequence, the taking of a substance causing an ADRV. The ISU therefore believes that this alleviated burden of evidence is not correct and that the provisions on Protected Persons and in particular the definition of No Significant Fault or Negligence ought to be revisited and fully reconsidered.

The question of source and its identification is part of one of the “concepts” set for discussion by WADA. The ISU believes that No intention may in certain circumstances be admissible without evidence of the source. However, it is incorrect to systematically relieve certain persons from that evidence. In most cases, evidence of source is a necessary factual component to the determination whether the resulting ADRV is faulty or not, intentional or not. The measure of the fault requires that the facts be properly laid out, which, in most cases requires evidence of the source or at least identification of the source.

The outcome of the current definition of No Significant Fault or Negligence is to allow that minor athletes who need protection cannot be sanctioned. In certain countries where doping is a systemic problem, the consequence is that the use of prohibited substances to support the effort and performance of athletes under 16 is facilitated. This fully undermines the purpose which is precisely to avoid that prohibited substances be administered to athletes under 16. The health of these athletes is at stake. This potentially allows for the administration of substances that may delay puberty and growth or that may otherwise be harmful, with possible delayed consequences for the health of these very young athletes once they reach adulthood.

In addition to these questions of principle, the ISU believes that the wording of this exception for Protected Person leads to many questions of interpretation and high uncertainty.

## 2. TEAM IN A SPORT WHICH IS NOT A TEAM SPORT

"Currently the WADC does not provide a provision for consequences of an ADRV related to a team in a sport which is not a Team Sport. The ISU, thus, proposes to add a new para 4 to Article 11 or a new article which shall read as follows:

"11.4 *Consequences for teams in sports that are no Team Sports*

### 11.4.1 *Testing of Teams*

*Where one member of a team (outside of Team Sports) has been notified of an anti-doping rule violation under Article 7 in connection with an Event, the ruling body for the Event shall conduct appropriate Target Testing of all members of the team during the Event Period.*

### 11.4.2 *Consequences for Teams*

*11.4.2.1 An anti-doping rule violation committed by a member of a team, including substitutes, in connection with an In-Competition test automatically leads to Disqualification of the result obtained by the team in that Competition,*

with all resulting Consequences for the team and its members, including forfeiture of any medals, points and prizes.

11.4.2.2 An anti-doping rule violation committed by a member of a team, including substitutes, occurring during or in connection with an Event may lead to Disqualification of all of the results obtained by the team in that Event with all Consequences for the team and its members, including forfeiture of all medals, points and prizes, except as provided in Article 11.4.2.3.

11.4.2.3. Where an Athlete who is a member of a team committed an anti-doping rule violation during or in connection with one Competition in an Event, if the other member(s) of the team establish(es) that he/they bear(s) No Fault or Negligence for that violation, the results of the team in any other Competition(s) in that Event shall not be Disqualified unless the results of the team in the Competition(s) other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation."

In addition, the ISU proposes to amend Article 10.10 WADC, because this provision is not specific in case the period of Ineligibility imposed on an Athlete includes a Team Event, to which the Athlete contributed points. A last sentence shall be added to this provision readings as follows:

*"10.10 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation*

*In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other antidoping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes. If the competitive results of the Athlete to be Disqualified include a Team Event the Athlete's points shall be deducted from the Team Result at that Team Event and the team reranked accordingly without recalculating the whole Team Event's results."*

The ISU is making itself available to further discuss and elaborate on these issues, if required.

## National Olympic Committee and Sports Confederation of Denmark

Mikkel Bendix Bergmann, Legal Advisor (Denmark)

Sport - National Olympic Committee

SUBMITTED

## Virtual testing

During the Covid-19 pandemic, adjustments were made to the International Standard for Testing and Investigations (ISTI), allowing for sample collection in a virtual environment. This provision is currently outlined in ISTI, annex K, with additional guidance provided for Testing During the Covid-19.

There is a perspective suggesting that further exploration could be beneficial regarding the possibility of virtual testing in various settings, not limited to pandemic scenarios. The evolving landscape toward increased virtual interactions prompts consideration for a more flexible approach that could benefit National Anti-Doping Organizations (NADOs), athletes, and other stakeholders.

An option to conduct sample collection in virtual settings is particularly envisioned to be viable with Dried Blood samples, as they potentially present fewer privacy concerns compared to urine tests. The potential advantages and implications of expanding virtual testing options are under consideration, taking into account the changing dynamics

of the virtual landscape.

## Education for Hearing Panels

There is a consideration for the mandatory education of members serving on Hearing Panels. Given the distinctive legal nature of anti-doping rules, which differs from the typical legal areas that panel members are accustomed to, and the unique context of the cases involved, it becomes increasingly essential to explore avenues to enhance the legal understanding of Hearing Panel members.

To bolster the legal security of athletes, we are open to the idea of providing Hearing Panel members with comprehensive introduction and education in the relevant rules and systems. This approach could potentially mitigate the risk of inconsistencies in cases and potential misinterpretations of the rules. Further exploration of more explicit guidelines or demands for the education of Hearing Panels could be considered to ensure a well-informed and consistent application of anti-doping rules.

### Botswana Football Association

Boago Diphupu, Mr (Botswana)  
Sport - Other

SUBMITTED

- We need to fight doping together
- more education is key
- Help developing Countries
- Let anti-doping to be started at school
- Media should be updated about what is going on so to report about wrong doings.

### UNESCO/SHS

Marcellin Dally, Chief of Section (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

In alignment with the ongoing cooperation between UNESCO and WADA, as well as with UNESCO's role in the global sport ecosystem as host of the only international treaty on this matter, the opportunity to provide feedback during the first phase of the 2027 World Anti-Doping Code and International Standards update process is essential.

As such, UNESCO would like to draw attention to the following points concerning 2021 World Anti-Doping Code:

#### **· Improving the process of notification of amendments to the Annexes to the Convention - the Prohibited List and the International Standard for Therapeutic Use Exemptions:**

Regarding Article 4.1, *Publication and Revision of the Prohibited List*, UNESCO would like to seek WADA's cooperation on the adoption process of the updated Prohibited List and International Standard for Therapeutic Use Exemptions. WADA's process usually takes place during the second half of September every year. Taking into account the statutory timeframe established for the notification process, WADA's adoption process presents a significant challenge in terms of timely notification to States Parties, as the Secretariat is given limited time to transmit the official notification to all States Parties.

In light of this, UNESCO urges the World Anti-Doping Agency (WADA) to engage in a constructive dialogue with UNESCO aimed at exploring means and ways to ensure greater efficiency and inclusivity in the notification process, thereby allowing States Parties to review amendments in a timely manner.

Furthermore, in reference to Article 4.3, the *Criteria for Including Substances and Methods on the Prohibited List*, and considering UNESCO's initiative addressing unexplored substances that may compromise sports integrity, we seek WADA's support, particularly in relation to matters of scientific research and practice. This support is crucial in the advancement of efforts to protect the integrity of

sports through scientific evaluation and oversight.

#### · **Enhanced Reciprocity and Participation Levels:**

Article 20.7 of the World Anti-Doping Code (2021) clearly highlights WADA's Roles and Responsibilities. To consolidate the effectiveness of this provision, enhancing transparency and emphasizing inclusivity within WADA's operations would be crucial.

As such, we advocate for the fostering of balanced and reciprocal participation levels within WADA governing bodies' frameworks, such that accountability and trust among stakeholders may be reinforced.

Efforts to deepen the participation of UNESCO in WADA's decision-making bodies, in alignment with WADA's role at the Conference of Parties, could be supplemented with or pursued in parallel to an examination of the Council of Europe's current status and the establishment of frameworks facilitating meaningful engagement opportunities in shaping anti-doping rules and regulations.

#### · **Clarity in the Division of Roles:**

The World Anti-Doping Code (2021) plays a crucial role in delineating roles and responsibilities in terms of anti-doping efforts (Article 24). However, relevant stakeholders frequently encounter difficulty in defining the precise division of roles and responsibilities between WADA and UNESCO. Clarity in this regard within the Code could alleviate potential overlaps or gaps, assuring more streamlined cooperation between WADA and UNESCO in the implementation of anti-doping policies worldwide.

Additionally, with regard to Article 20.5 *Roles and Responsibilities of National Anti-Doping*

*Organizations*, there remains a notable ambiguity in the defining roles and responsibilities of governments and NADOs. In order to balance their independence and autonomy, it is imperative that the World Anti-Doping Agency (WADA) provides more in-depth guidance to its stakeholders. This guidance should clarify the relationship between governments and NADOs, particularly concerning the roles of national depository authorities or delegated authorities in relation to NADOs.

This could involve clarifying the exact status of NADOs in the context of national depository authorities for the Convention. Furthermore, this can include a detailed understanding of the extent and limitations of delegated authorities, as well as a precise distinction between 'independence' and 'autonomy', particularly if these concepts are contingent upon functional roles. Such clarity is vital to the effective operation of anti-doping governance structures.

#### · **Alignment for the inconsistency in consequences for non-compliance:**

An examination into inconsistencies of consequences for non-compliance is also warranted. When a NADO breaches the Code, the consequences can extend to the entire State, which is not signatory to the Code, but to the Convention. These concerns have been raised unanimously by States Parties at the ninth session of the International Convention against Doping in Sport and have been echoed during the most recent WADA Foundation Board meeting, notably regarding WADA's sanctions in response to the delays or working methods of countries' legislative processes. This disparity in the severity of consequences and sanctions, as well as the recipient of these consequences and sanctions, might require further alignment to ensure fairness and proportionality.

The mainstreaming of consultations between UNESCO and WADA would be vital to the development of a holistic methodology with respect to compliance, balancing States Parties' imperatives in terms of giving effect to commitments under the Convention and WADA imperatives in terms of ensuring that NADOs give full operational effect to the Code.

#### · **Expansion of Scope for Education:**

Article 18.2 of the World Anti-Doping Code (2021) clearly highlights the importance of education programs in preventing rule violations. While this provision rightly emphasizes existing Substances and Methods on the Prohibited List, it's crucial to acknowledge emerging technologies, specifically neurotechnologies, and their potential impact on sports. This is a new area that UNESCO is actively investigating, and in which collaboration

could produce substantial benefits for the global sport ecosystem.

Neurotechnologies represent an innovative frontier with the capacity to significantly influence athletes' performance and well-being. Educating athletes on the ethical boundaries, risks, and responsible use of these technologies aligns with the goals of anti-doping education in Article 18.2.

By integrating neurotechnology education into anti-doping programs, athletes and stakeholders can be empowered with important knowledge, thereby promoting informed decision-making and upholding sport values, ethics and integrity.

#### · **Ethical Considerations and Stakeholder Involvement:**

Article 16 Doping Control for Animals Competing in Sport of the World Anti-Doping Code (2021):

“In any sport that includes animals in Competition, *the International Federation* for that sport shall establish and implement anti-doping rules for the animals included in that sport.”

The provision could be further enforced by expanding beyond doping concerns and encompassing broader ethical implications regarding animal welfare and fair treatment in sports by involving diverse stakeholders to provide a more holistic perspective in drafting these regulations.

For instance, WADA could further engage with independent animal welfare organizations and governmental veterinary authorities specializing in assuring the humane treatment of animals. These entities could provide oversight for veterinary practices, ensuring that doping regulations do not compromise the health and well-being of animals involved in sports, in alignment with broader animal welfare principles and best practices.

#### · **Harmonization of Anti-Doping Specific Terms:**

It is critical to ensure clarity and consistency in the usage of specific terms related to anti-doping. For instance, the term 'public authorities' should not be considered synonymous with the intergovernmental nature of the Conference of Parties (COP). In order to avoid ambiguities and establish a shared understanding across all relevant stakeholders, a number of key terms and concepts require definition and differentiation within the global anti-doping framework.

In conclusion, UNESCO will continue to work in close cooperation with WADA to support States Parties and reinforce their capacity to provide societies with a sport environment free from all the threats to sport integrity: doping, discrimination, racism, gender inequality violence and corruption.

We look forward to further strengthening the collaboration between UNESCO and the World Anti-Doping Agency for the greater good of ethical sports practices worldwide.

### **Council of Europe**

SUBMITTED

Council of Europe, Sport Convention Division (France)

Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

#### A. General remarks

The following four general remarks are offered as a general introductory comment to the process in order to link with the European position and previous CAHAMA mandates on this subject:

#1 - reminder about the limited review and update of WADP and need of assessment of the impact of the planned modifications on the resources of stakeholders;

#2 - reminder about the relation between national (sports related) rules and regulations and the Code and the limited liability of NADOs for the adoption of legislations and regulations;

#3 - differences for IFs and NADOs at CAS appeals; unfair und disproportionate burden of financial risk and responsibilities by NADOs; NADO should not be held accountable in terms of compliance for a decision taken by an independent hearing body (relation to the ISCCS);

#4 - athletes rights, fair hearing and flexibility/proportionality; for example: lower the burden of proof on lower level athletes and protect persons; reduce the complexity of the Code (especially for lower level athletes)

## B. Definitions

There is a proposal to improve the following Definitions:

- recreational athletes;
- in-Competition.

## C. NADO authority

Article 9.5.2 ISCCS states that “Signatories shall ensure that they have due authority under their statutes, rules and regulations to comply with this requirement in a timely manner.”

NADOs often do not have this authority and cannot just claim such authority in their rules or statutes. This issue should be addressed in the Code.

### Organizacion Nacional Antidopaje de Uruguay

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

SUBMITTED

No comments

### Anti-Doping Agency of Kenya

Bildad Rogoncho, Head of Legal Services (Kenya)  
NADO - NADO

SUBMITTED

Athletes who violate their periods of provisional suspension should be charged with a second ADRV. Such participation is indicative of a lack of respect for the Results Management Process and as such should not be condoned. Furthermore, in some countries such athletes end up benefiting financially and the process of recovery of such benefit is difficult if not impossible.

### Agence française de lutte contre le dopage

Adeline Molina, General Secretary Deputy (France)  
NADO - NADO

SUBMITTED

- En matière de compétence du TAS, en appel pour les sportifs de niveau international ou faits commis lors de manifestations internationale, il existe un sérieux risque juridique et une inégalité de traitement pour les sportifs et pour les ONAD selon l'OAD qui a initié la gestion des résultats. La procédure devant le TAS est par principe gratuite lorsque le défendeur est une fédération internationale. Elle n'est en revanche pas gratuite lorsque c'est une ONAD, ce qui signifie qu'in fine, le sportif ou l'ONAD, voire l'AMA le cas échéant, doivent supporter les frais de la procédure.

Les coûts de ces procédures limitent considérablement l'accès du sportif au juge, quand bien même le TAS



proposerait une assistance judiciaire pour les plus démunis, et interpellent quant au respect des principes du procès équitable.

De plus, les sportifs, bien qu'ils relèvent tous du niveau international et/ou concourent au niveau international, ne sont pas égaux devant le TAS, puisque le coût de la procédure est uniquement conditionné par l'identité de l'OAD qui a initié la gestion des résultats.

Ce système est également particulièrement inéquitable pour les ONAD, qui, lorsqu'elles agissent en complément des activités des fédérations internationales, notamment lorsque celles-ci sont défaillantes, doivent supporter des coûts de procédure importants.

Il convient donc de remédier à ce risque et à cette iniquité.

- S'agissant de personnes protégées et sportifs de niveau récréatif, ces deux catégories de personnes ne sont pas obligées de démontrer l'origine de la présence de la substance pour bénéficier du régime d'absence de faute ou de négligence significative. Or, il est pour le moins difficile d'établir le degré de faute d'un sportif sans savoir ce qu'il s'est passé. Un commentaire ou des lignes directrices seraient les bienvenus.

## Anti-Doping Sweden

Jessica Wissman, Head of legal department (Sverige)  
NADO - NADO

SUBMITTED

### CAS practice

ADSE proposes that in the preface of the Code and/or the ISRM the importance of global harmonization when it comes to sanctioning athletes should be more explicit pointed out. Nowhere in the Code or International standards it is stated how leading CAS practices is expected to be integrated in the national punishment systems and when. The ISRM guideline should be updated with relevant CAS case law that is expected to be followed by the Anti-Doping organizations.

### Code Article 10.6.1.2

ADSE proposes clarification of the regulation/guideline relating to Code Article 10.6.1.2. In cases where the explanation of an Adverse Analytical Finding is a dietary supplement contaminated with prohibited substances, whereof the athlete should establish the origin of the prohibited substance, it is- in ADSE's opinion- unclear what sufficient evidence is expected for the athlete to bring forward. The only guidance (comment to article 10.6.1.2) is that the athlete has declared the specific product on the Doping Control Form. Examples of other substantial evidence that is relevant should be included as well as references to relevant CAS case law. Is it mandatory or not to analyze the supplement? Is two supplement with the same batch number and expiring dates necessary (which the WADA accredited laboratories recommends)?

ADSE also suggest that for these cases there should be a lower burden of proof for lower-level athletes and recreational athletes. There are financial differences for these athletes and they also lack anti-doping education.

### Code Article 10.14.1

ADSE proposes clarification of the Code Article 10.14.1 of what an athlete can or cannot do during his/her suspension. More examples would be helpful, for example relating to receiving training programs, training with other athletes, training in facilities that is owned by a commercial company, participating in different types of education (course for trainers organized by a national federation), club events (annual general meeting, a club party etc) or a sponsor event, sign a contract with a new club during ineligibility or sign up for participating in a competition before the period of ineligibility has expired (the competition is after). May an athlete train on his/her own in a facility owned by a Signatory member organization (if the facility hasn't specific rules that prohibits that)? More examples to clarify the distinguish between punishable (organized) and unpunishable (unorganized) training during ineligibility would be helpful.

ADSE also considers that section two in the same Article could be clearer relating to *competitions authorized or organized by* other international or national *Event* organization. More examples of what is prohibited would be

helpful.

### Code Article 10.14.3

ADSE propose that the results management process for a violation of the prohibition of participating during ineligibility should be more specific. In ADSE's opinion a "normal" ADRV process in accordance with the ISRM should be considered (including the charge stage).

### Code Article 13.1.3

Code Article 13.1.3 indicates that WADA has the right to appeal decisions directly to CAS, without exhausting the national remedies first. In ADSE's opinion this option should only be applied in exceptional circumstances. Primarily, the appeal should take place through the national remedies, especially when it includes national-level athletes (or even lower level. This with respect to costs for the athletes (and NADOs), language barriers and also with respect to the extended process in CAS, which is not in the best interest for the athletes.

### Provisional suspension- cocaine and ecstasy

ADSE assess that there is a need for an adjustment when it comes to the mandatory provisional suspension relating to the non-specified substances of abuse (cocaine and ecstasy). Either there should be an exemption in these cases and that a voluntarily provisional suspension is proposed, alternatively the ADO should be able to invalidate the mandatory provisional exemption and not as the regulations is today, via the Hearing Panel on the athlete's initiative (Code Article 7.4.1 section 2 ii).

### Provisional hearing & expediated hearing

ADSE also proposes a review of Code Article 7.4.3, the definition of the term *Provisional hearing* should be extended- is this within the scope of the ADO or for the Hearing Panel? More guidance on an *expediated final hearing* is also necessary.

### Final decision

ADSE proposes that a definition of the term *final decision* should be imposed. This is important in the interpretation of a provisional suspension and if for example the athlete's period of ineligibility has run out, but the case is appealed to CAS. ADSE suggests that this is clarified (Code Article 10.13.2.1)

## NADA

NADA Germany, National Anti Doping Organisation (Deutschland)  
NADO - NADO

SUBMITTED

As to NADA GER the following topics should also find further consideration:

- Relation between national (sports related) rules and regulations and the Code and the limited liability of NADOs for the adoption of legislations and regulations
- IF / NADOs – at CAS appeals; unfair und disproportionate burden of financial risk and responsibilities by NADOs; NADO should not be held accountable in terms of compliance for a decision taken by an independent hearing body à relation to the ISCCS;
- Lower the burden of proof on lower level athletes and protect persons; reduce the complexity of the Code (especially for lower level athletes)

## USADA

Allison Wagner, Director of Athlete and International Relations (USA)  
NADO - NADO

SUBMITTED

## Article 6.2: Timing of Sample Analysis

Issue: Article 6.2 that says “Samples and related analytical data or Doping Control information shall be analyzed to detect Prohibited Substances and Prohibited Methods identified on the Prohibited List . . .” See also Article 6.1.

Recommendation: There should be consideration given to storage of DBS samples without analysis to support anti-doping rule violations such as determining if a substance prohibited in-competition was used out-of-competition or contamination scenarios. USADA recommends a comment clarifying that Article 6.2 permits storage of accompanying samples, like DBS samples, for analysis based on the circumstances of a particular case.

## Article 7.4.1: Timing of Provisional Suspensions in Adverse Passport Finding cases

Issue: There is an ambiguity as to the timing of the commencement of a provisional suspension in an adverse passport finding case under Article 7.4.1 of the Code. Specifically, the ambiguity is whether a provisional suspension should be imposed when ADOs notify the athlete or when ADOs charge the athlete.

Article 7.4.1 states that “...when an *Adverse Analytical Finding* or *Adverse Passport Finding* (upon completion of the *Adverse Passport Finding* review process) is received for a *Prohibited Substance* or a *Prohibited Method*, other than a *Specified Substance* or *Specified Method*, a *Provisional Suspension* shall be imposed **promptly upon or after the review and notification required by Article 7.2.**” (emphasis added). Article 7.2 refers to the notification phase, not the charging phase of the results management process, but the earlier reference in APF cases to imposing a provisional suspension “upon completion of the adverse passport finding review process” suggests that ADOs should potentially wait until after the expert panel has reviewed the athlete’s explanation and charged the athlete to impose a provisional suspension. This interpretation, however, may conflict with the requirement that the provisional suspension be imposed “promptly upon or after” notification.

Recommendation: In Article 7.4.1, edit the parenthetical “(upon completion of the *Adverse Passport Finding* review process)” to read “(upon completion of reviewing the *Athlete’s* explanation, if any).”

## Article 10.9: Multiple Violations

Issue: The current calculation for a second violation creates a scenario where fault has to be assessed twice to reach the appropriate sanction length. It has to be assessed first to determine both the lower and upper limits of a sanction range: “the period of *Ineligibility* otherwise applicable to the second anti-doping rule violation treated as if it were a first violation” (Art. 10.9.1.1(b)(i)). And then it is assessed again to determine where the Athlete falls within the sanction range: “[t]he period of *Ineligibility* within this range shall be determined based on the entirety of the circumstances and the *Athlete* or other *Person’s* degree of *Fault* with respect to the second violation.” This embedded fault analysis is quite complex and ripe for mistakes or disparate outcomes.

Recommendation: Remove the range and second fault assessment by indicating that the sanction for a second violation is the greater of six months or “the sum of the period of *Ineligibility* imposed for the first anti-doping rule violation plus the period of *Ineligibility* otherwise applicable to the second anti-doping rule violation treated as if it were a first violation.”

## Article 10.14.1: Testing During Ineligibility or Provisional Suspension

Issue: The last paragraph in Article 10.14.1 says that “[a]n *Athlete* or other *Person* subject to a period of *Ineligibility* shall remain subject to *Testing* and any requirement by an *Anti-Doping Organization* to provide whereabouts information.”

a. First, I am not aware of non-athletes being able to be tested under the Code, so not sure why there is a reference to “or other *Person*.”

b. Second, the phrase “remain subject to *Testing*” creates a question/gap in the rules if the individual was not subject to *Testing* (due to retirement or their membership expiring) at the time the period of *Ineligibility* was imposed.

Recommendation: Correcting both issues is straight forward.

a. Assuming non-athletes cannot be tested, remove the reference to “or other Person.”

b. To avoid any issue with whether an athlete should be subject to *Testing* during a period of *Ineligibility*, replace the word “remain” with “be” and add the caveat, unless the athlete retired in which case the period of *Ineligibility* is tolled.

#### Article 10.14.1: Scope of Prohibition During a Period of Ineligibility

Issue: The comment to Article 10.14.1 was revised in 2021 to include the following sentence: “An *Athlete* or other *Person* serving a period of *Ineligibility* is prohibited from coaching or serving as an *Athlete Support Person* in any other capacity at any time during the period of *Ineligibility* and doing so could also result in a violation of 2.10 by another *Athlete*.” The reference to a potential 2.10 violation is clearly correct, but there is no textual hook in Article 10.14.1 to the statement that individuals are prohibited from coaching or acting as *Athlete Support Personnel* during a period of *Ineligibility*. The rule would only prohibit such activities if it was an “activity” “authorized or organized” by any of the entities listed in the rule.

Recommendation: The unenforceable interpretation of Article 10.14.1 in the comment should be removed because comments should explain the rule not inappropriately expand it.

#### Articles 27.4 and 27.6: Making Multiple Violation Determinations when the Prohibited List Changes

Issue: There is considerable ambiguity as to whether to count a violation as a first violation for purposes of Article 10.9 if the substance or method has been removed from the list or a decision limit has been put into place such that the first violation would not be a violation if it occurred today.

a. Article 27.6, which discusses changes to the prohibited list, appears to be designed to prevent someone from escaping liability based on a change to the prohibited list. For example, Article 27.6 makes clear that if an athlete’s use in a prior year had been caught in a subsequent year after the prohibited list changed to make it no longer a violation, that athlete would still face a violation. But Article 27.6 does not appear designed to impact multiple violation calculations as that is squarely addressed by Code Article 27.4.

b. Because Code Article 27.4 is specific to multiple violations and because the “Code rules” as referenced in Article 27.4 necessarily include the prohibited list (Art. 4), USADA interprets this to mean that a violation, that is no longer a violation due to changes to the prohibited list, should not be counted as a first violation for purposes of calculating a sanction under Article 10.9.

Recommendation: Add a comment to Article 27.6 that clarifies that it does not implicate multiple violation determinations.

#### Fault Determinations

Issue: There is no established framework for evaluating *Fault* when the period of *Ineligibility* range is 0-2 years.

Recommendation: A specific clause, comment, or guideline establishing a framework, like the one described in *Cilic* (which applied the 2009 Code), would be helpful in harmonizing sanction determinations around the world.

#### CAS Decisions

Issue: There have been unreasonable delays by CAS Panels or CAS issuing written awards.

Recommendation: Include in the rules a requirement that reasoned awards must be issued by CAS Panels within 60 days of the close of the hearing absent exceptional circumstances. Arbitrators hearing USADA’s first instance cases are required to issue reasoned awards within 30 days, and there has almost never been an issue with arbitrators being able to comply with this timeline.

#### Case Database

Issue: There is no easily accessible central database for all published arbitration decisions and awards.

Recommendation: WADA to create an open access, searchable case repository for published arbitration decisions it receives.

## ONAD Communauté française

Julien Magotteaux, juriste (Belgique)

NADO - NADO

SUBMITTED

### General Position – General comments:

In general and in accordance with previous CAHAMA mandates of May and September, regarding the revision of the WADP, Belgium:

- Supports WADA's repeated commitment to a limited review and update of the Code and International Standards, rather than a full review;
- Asks WADA again, as it committed to doing from the start of the process, for an assessment of the impact of the planned modifications on the resources of stakeholders, on the legislation and on the rights of athletes;
- Supports a flexible approach in general, preferring, wherever possible, the adaptation or adoption of guidelines rather than the revision of the Code and Standards;
- In line with the pillars of the Council of Europe and with the Riga Conference of October 3 on the right to a fair trial, requests that no envisaged modification have the direct or indirect effect of reducing the right to a fair trial, nor the athletes' rights.

Furthermore, also in connection with the right to a fair trial and with the general principle of the separation of powers and in accordance with a common position, discussed at the T-DO LI meeting of October 4, 2023, Belgium considers that it is not normal and legally correct that NADOs must ultimately respond, in terms of compliance, to a decision taken by an independent hearing body. This issue should be taken into account by WADA, probably in the Code, via a clarification of the roles of the actors, but also in the Standard on compliance.

The same observations apply with regard to the adoption of legislation or regulations compliant. The adoption of legislation or regulations is not the responsibility of a NADO. This issue should be taken into account in the revision of the Standard on compliance, in order, on the one hand, to better understand what is (or is not) the responsibility of NADOs and, on the other hand, to avoid any sanction for a NADO or for the athletes for any question in link with the adoption of legislation or regulations.

Finally, regarding general remarks, the Riga conference highlighted the fact that the anti-doping system and rules were became complex, which meant that it took time to explain them to the athletes. In this context, as much as possible, a simplification of the rules would also be desirable and encouraged.

The specific remarks which follow, on the different concepts, per document, are without prejudice to the general position and general comments which precede.

## NADA Austria

Alexander Sammer, Head of Legal (Austria)

NADO - NADO

SUBMITTED

According to **Article 5.6.2 WADC** if the Athlete then wishes to return to active competition in sport, the Athlete shall not compete in International Events or National Events until the Athlete has made himself or herself available for Testing by giving six-month prior written notice (or notice equivalent to the period of Ineligibility remaining as of the date the Athlete retired, if that period was longer than six (6) months) to the Athlete's International Federation and National Anti-Doping Organization. This means that if the athlete decided to retire right away and receives a four-

year ban, he is not able to compete on a national level for four years. Since there is no statute of limitation here, this leads to situations where an athlete has retired with 25 years and wants to return to active competition with 35 years, he is effectively unable to compete in a national event until he is 41 years old. This seems disproportionate and could also be seen as double punishment.

**Article 10.14.1 WADC** regulates that banned Athletes or other person are not allowed to participate in any capacity in a competition or activity. Although Comment Nr. 77 gives some examples on the scope of this provision the bold marked part in the above-mentioned sentence should be still more clarified. There should be more examples or a list of examples which activities (also administrative ones) are not allowed during the time when an athlete is under sanction.

With regard to **Article 14.4 WADC** we suggest that there needs to be an education report that WADA is publishing similar to the testing figures report. The challenge will be to establish a harmonized reporting system to have comparable results, but this is needed to further promote the importance of education. A starting point will be clear definitions of the different activities. The current CCQ already requires ADOs to report their figures. To serve as the basis for an education report, further though must be given to certain categories (e.g. there is a level of sport for athletes (RTP, International Level, National Level, etc.), but not in connection with ASP.

## CHINADA

Yao Cheng, Result Management (China)  
NADO - NADO

SUBMITTED

### 1. Comment to Article 7.4.4

As set out in Code Article 7.4.4, athletes on their own initiative may voluntarily accept a provisional suspension if done so prior to the later of: (i) the expiration of ten (10) days from the report of the B sample (or waiver of the B sample) or ten (10) days from the notice of any other ADRV, or (ii) the date on which the athlete first competes after such report or notice. Option (ii) here differs significantly from the calculation of option (i) in that it does not specify who determines “the date on which the athlete first competes”, by the athlete, the event organization or the ADO. In this sense, it lacks temporal clarity and predictability, and it actually means that the athlete can voluntarily accept a provisional suspension at any time. If so, this option is meaningless and undermines the certainty of the results management process.

### 2. Comment to Article 10.11

As set out in Code Article 10.11, an ADO or other signatory that has recovered prize money forfeited as a result of an ADRV shall take reasonable measures to allocate and distribute this prize money to the athletes who would have been entitled to it had the forfeiting athlete not competed. This provision would not only place an extra burden on ADOs, but also make it difficult to operate. NADOs are subject to strict legal and policy restrictions on the use and management of their funds, and the recovery and distribution of forfeited prize money would face obstacles such as financial audits. ADOs should focus on anti-doping activities, and the allocation and distribution of prize money should be the responsibility of the event organizations, the IFs or the NFs, or should be explicitly stated in the signatory’s own anti-doping rules.

### 3. Comment to Article 10.12

Article 10.12 (Financial Consequences) is suggested to incorporate a dedicated policy for protected persons, given their lack of sufficient personal assets to assume this responsibility, which results in the tendency that excessive financial consequences are often shifted to their parents or other guardians. It is suggested that the principle of prudent application of financial consequences to protected persons be introduced. This could involve, for example, providing that financial consequences for protected persons be reduced or eliminated, as appropriate, depending on the financial situation of the family and the degree of fault of the other persons concerned.

### 4. On strengthening the government support for investigations

The importance of investigations in anti-doping activities is constantly increasing, but many ADOs still encounter a

lack of legal basis and effective means to conduct investigations. Therefore, CHINADA suggests that within the appropriate section of Code Article 22 (Involvement of Government), for example, in Article 22.5, it should be explicitly specified that each government is expected to provide ADOs with legal and policy support and substantive assistance in conducting investigations. This includes providing intelligence information and judicial assistance in the fight against serious illegal activities such as smuggling, illegal manufacture, trafficking of prohibited substances, and administration of prohibited substances to athletes, etc., cooperating with ADOs to conduct further investigations, and if necessary, pursuing criminal liabilities in accordance with the law to enhance deterrence and sanctions for serious ADRVs (ADRVs). Meanwhile, it is suggested to include information sharing and law enforcement cooperation between ADOs and governments during in the development of the International Standard for Intelligence and Investigations.

## **5. On the relationship between international standards and guidelines**

According to the Code, WADA recommends and provides the best practice models and guidelines to signatories and other stakeholders, but they are not mandatory. As a matter of fact, there are many references to guidelines in the texts, comments and appendices of international standards. For example, the International Standard for Testing and Investigations (ISTI) contains 14 references to the guidelines, including the Intelligence and Investigations Guidelines, the Guidelines for Implementing an Effective Testing Program, and the Guidelines for sample Collection. With so many cross-references, it is difficult to distinguish the mandatory provisions from the best practice models. For another example, Part 3 (Mandatory Protocols) of the ABP Operating Guidelines (V9.0) is mandatory, including the procedures for the collection, storage and transport of blood ABP samples, the EAAS technical documents and results management procedures. Any violation of these guidelines may result in the reversal of an adverse passport finding. Therefore, the validity of the ABP Operating Guidelines is inconsistent with the description of the guidelines in the Code.

## **6. On B sample Analysis**

An ADRV under Article 2.1.2 can be established by any of the following: presence of a prohibited substance or its metabolites or markers in the athlete's A sample where the athlete waives analysis of the B sample and the B sample is not analyzed; or, where the athlete's B sample is analyzed and the analysis of the athlete's B sample confirms the presence of the prohibited substance or its metabolites or markers found in the athlete's A sample. The question is, if the results of the A sample and the B sample do not match, does it prove that the athlete did not commit an ADRV?

According to Article 7.4.5, if a provisional suspension is imposed based on an A sample AAF and a subsequent B sample analysis does not confirm the A sample analysis, then the athlete shall not be subject to any further provisional suspension on account of a violation of Article 2.1. We have noted, however, that some athletes have been asserted for ADRVs and imposed periods of ineligibility for cases where the A and B samples do not test the same, such as CAS 2018/A/6069 (André Cardoso v. Union Cycliste Internationale), and the Czech triathlete Vojtech Sommer's positive case for EPO. Considering that there have been a number of cases with inconsistent findings between A and B samples, which have happened to several laboratories in recent years, we suggest that the comment to Code Article 2.1.2 or the International Standard for Results Management clarify how to address these cases.

## **7. Doping control delegated by non-signatories**

As set out in Code Article 15.3, an anti-doping decision by a body that is not a signatory to the Code shall be implemented by each signatory if the signatory finds that the decision purports to be within the authority of that body and the anti-doping rules of that body are otherwise consistent with the Code. However, neither the Code nor the international standards specify whether an ADO can be delegated by a non-signatory to conduct doping control over athletes or other persons under its jurisdiction. If so, is it required to comply with the Code and international standards, or is it allowed to follow the anti-doping rules adopted by the ADOs themselves?

It is known that many ADOs are delegated by non-signatories to conduct doping control, but the specific practices vary. The International Standard for Laboratories requires that sample analysis from non-signatories to the Code (organization or sport) shall not negatively affect the allocation of resources of the ADOs. As a result, many laboratories are cautious about whether to accept samples from non-signatories. It is recommended that the Code clearly define doping control delegated by non-signatories and that relevant guidelines be developed by WADA.

## 8. Non-retroactivity of the Prohibited List

After a laboratory has reported a sample as negative, or the sample has not otherwise resulted in an ADRV charge, it may be stored and subjected to further analyses for the purpose of Article 6.2 at any time exclusively at the direction of either the ADO that initiated and directed sample collection or WADA.

Although the ADO or WADA may direct the laboratory to conduct further analysis of the samples, such further analysis should be subject to the principles of legality and fairness, and observe the underlying spirit of “the law does not retroactively apply”, with the purpose to balance clean sport and the protection of athletes’ legitimate rights and interests. In particular, with regard to the substances not explicitly listed on the previous version of the Prohibited List, the fact that the laboratory did not report a positive finding at that time means that, by the criteria of that year, the presence of such substances in the athlete’s samples does not constitute an ADRV. Even if the substance is later explicitly listed in subsequent versions of the Prohibited List, the principle of “the law does not retroactively apply” is fundamental to the rule of law. It means that current rules cannot govern past actions, and the current Prohibited List cannot be used to punish athletes for actions that occurred in the past.

If the current Prohibited List is used to guide review and pursue athletes, a question needs to be answered: if a substance is removed from the Prohibited List (e.g., alcohol, caffeine) or if the technical document for the detection of a substance is adjusted (e.g., Boldenone, EPO, Higenamine, specified diuretics), then, after obtaining the athlete’s consent or the approval of the hearing body as required in Code Article 6.5, the ADO instructs the laboratory to review the sample based on the current Prohibited List and technical criteria, which returns negative. In this case, does it mean that the athlete did not commit an ADRV? We consider that it is necessary for WADA to clearly define the retroactive effect of the Prohibited List.

## 9. On the establishment of a mechanism for correction and review

As the fight against doping evolves, the anti-doping community has gained fresh insights into the causes of AAFs, certain testing parameters and technical documents, etc. Moreover, WADA has made adjustments at the rule level. Some individual cases previously treated as ADRVs may not have been reasonable, such as the EPO positive case caused by a genetic mutation. It is a fundamental principle of the rule of law that mistakes must be corrected, and the fight against doping must also be conducted with respect for science and courage to correct mistakes. In light of the principles of equity, impartiality, and practicality, we propose the establishment of a mechanism for error rectification and review within Article 27 or other relevant sections of the Code as well as in the International Standard for Results Management. For instance, it could provide that if new evidence emerges which sufficiently alters the determination of an ADRV or the imposed sanction after a decision has already been rendered or become effective, upon request from the concerned individual, either the ADO responsible for results management or WADA may issue a revised decision.

### Dopingautoriteit

Robert Ficker, Compliance Officer (Netherlands)  
NADO - NADO

SUBMITTED

#### 1. General observations and introductory comments

1.1. The World Anti-Doping Code (hereinafter: the “Code”) is the foundation for the national anti-doping rules, but it is also the foundation for the national anti-doping programs.



1.2. For these reasons the Code review process is the opportune moment to review whether the current system as based on the Code and the International Standards is fit for purpose.

1.3. It appears that the World Anti-Doping Program is currently somewhat out of balance: since 2021 the emphasis seems to have shifted from anti-doping to compliance and reporting. The challenge is to restore the balance: while compliance and reporting are important, the emphasis of the (N)ADOs' activities must return to anti-doping, i.e. anti-doping activities. After all, it is for this purpose that NADOs were established and why NADOs receive funding (with public/tax payer money).

1.4. The ensuing question is: how do we achieve this objective of restoring the balance, making the system fit for purpose?

1.5. Apart from responding to the concepts suggested by WADA, what other (strategic) challenges and goals do we see for the current Code review cycle?

## 2. Adopting national rules (Definition)

### 2.1. Topic:

NADOs often do not have the authority to adopt the national anti-doping rules, although the legal assumption under the Code is that they do.

### 2.2. Relevant provisions:

The definition of 'National Anti-Doping Organization' in the Code is:

*The entity(ies) designated by each country as possessing the primary authority and responsibility to adopt and implement anti-doping rules, direct the collection of Samples, manage test results and conduct Results Management at the national level. If this designation has not been made by the competent public authority(ies), the entity shall be the country's National Olympic Committee or its designee.*

The definition of 'Anti-Doping Organization' in the Code is:

*WADA or a Signatory that is responsible for adopting rules for initiating, implementing or enforcing any part of the Doping Control process. This includes, for example, (...) National Anti-Doping Organizations.*

Article 20.5.1 (Roles and Responsibilities of National Anti-Doping Organizations) regarding operational independence:

*"To be independent in their operational decisions and activities from sport and government, (...)"*

### 2.3. Issue:

2.3.1. The ISCCS contains the following objective: *"The ultimate objective is to ensure that strong Code-compliant anti-doping rules and programs are applied and enforced consistently and effectively across all sports and all countries, so that clean Athletes can have confidence that there is fair competition on a level playing field, and public confidence in the integrity of sport can be maintained."*

2.3.2. As the NADOs are primary responsible for consistently and effectively applying and enforcing the anti-doping rules and programs across all sports in their countries, it would seem a prerequisite that NADOs have the legal power (whether you want to call this jurisdiction or authority) to adopt the anti-doping rules.

2.3.3. If NADOs do not have this legal power, this may impair their effectiveness or operational independence. It may make NADOs dependent on the National Olympic Committee (NOC) or individual National Federations (NFs) to decide whether or not to adopt the anti-doping rules that the NADOs draft.

2.3.4. But what can NADOs do when:

a. the NOC decides to draft and adopt its own rules, which vary or depart from the NADO drafted rules; or

b. NFs decide to draft and adopt their own anti-doping rules, which vary or depart from the NADO drafted rules?

2.3.5. Under the Code, NADOs do not have any power or authority to counter or prevent such undertakings by the NOC and/or NFs. The NADO may complain to WADA, the government or the NOC, but not much else.<sup>[1]</sup>

2.3.6. Curiously enough, the Code (in Article 20.4.1<sup>[2]</sup>) grants NOCs and NPCs the freedom to adopt their own anti-doping rules and policies, without any limitation or reference vis-à-vis the anti-doping rules drafted by the NADO.

2.3.7. Even more curiously, the ISCCS places the Code compliance responsibility of having Code compliant anti-doping rules solely on the NADO, although the NADO often that does not possess the legal authority to adopt these rules.

2.3.8. The issues do not stop here:

a. The Code definition of 'Athlete' states that "an Anti-Doping Organization has discretion to apply anti-doping rules to an Athlete who is neither an International-Level Athlete nor a National-Level Athlete, and thus to bring them within the definition of "Athlete." However, when the NADO does not have the legal power, i.e. jurisdiction/authority, to adopt national anti-doping rules, because this legal power lies with the NOC or the individual NFs, the NADO most likely will also not have the legal power to apply the anti-doping rules to any athlete.

b. The comment to the definition of 'Athlete' in the Code states that NADOs may choose to "exercise authority" over individuals who are not International or National-Level Athletes. Again, NADOs may very well not have that authority on the national level.

2.3.9. To conclude, the 2021 Code often refers to the 'authority' that ADOs are supposed to have concerning many aspects of 'Doping Control'<sup>[3]</sup>, yet NADOs may not formally/legally have this authority.

*2.4. Recommendation:*

2.4.1. The definition of NADO in the Code can, to a varying degree, be legal fiction on the national level, making the NADO a paper tiger: NADOs are held responsible for Code compliance and enforces Code compliant rules and programs, but are reliant on the NOC and/or the NFs to cooperate. If they do not, the NADO is often powerless:

a. it cannot make the necessary changes on the national level in order to become Code compliant; and

b. it is not fully operationally independent: without the cooperation of the NOC and/or the NFs the NADO cannot effectively apply the anti-doping rules and program across all sports.

2.4.2. We understand that the Code cannot 'just' change national legal systems. However, when a country adopts legislation that is not in line with the Code, WADA - through the threat of non-compliance of the NADO - basically requires governments change their doping legislation. This is proof that when needed, structural changes can be made at the national level.

2.4.3. To (further) strengthen the operational independence of NADOs by clarifying and broadening the scope of operational independence in Article 20.5.1 Code.

2.4.4. The Code should clarify that ADOs, including NADOs, should have the authority and responsibility for (a) adopting rules and (b) for initiating, implementing and<sup>[4]</sup> enforcing any part of the Doping Control process.

3. Publication of sanctions (Article 14.3.2 Code)

*3.1. Topic:*

The publication of sanctions in relation to the GDPR<sup>[5]</sup>.

### 3.2. Relevant provisions:

The comment to Article 14.3.2 Code states the following.

*Where Public Disclosure as required by Article 14.3.2 would result in a breach of other applicable laws, the Anti-Doping Organization's failure to make the Public Disclosure will not result in a determination of non-compliance with Code as set forth in Article 4.2 of the International Standard for the Protection of Privacy and Personal Information.*

Article 4.2 ISPPPI states:

*Anti-Doping Organizations may be subject to data protection and privacy laws that impose requirements that exceed those arising under this International Standard. In such circumstances, Anti-Doping Organizations must ensure that their Processing of Personal Information complies with all such data protection and privacy laws.*

### 3.3. Issue:

3.3.1. Following communication from WADA Compliance department, it has become clear that WADA's interpretation of the comment to article 14.3.2 Code is as follows:

*Where **CAS** decides that Public Disclosure as required by Article 14.3.2 would result in a breach of other applicable laws, the NADO's failure to make the Public Disclosure will not result in a determination of non-compliance with Code as set forth in Article 4.2 of the International Standard for the Protection of Privacy and Personal Information.*

*However, if **CAS** decides that Public Disclosure as required by Article 14.3.2 would **not** result in a breach of other applicable laws, even if there is a formal decision to the contrary by the national Data Protection Authority (DPA), the NADO's failure to make the Public Disclosure will result in a determination of non-compliance with Code.*

3.3.2. This WADA interpretation **includes** situations where the DPA of a country has issued a formal decision that the publication of one or more of the mandatory elements of Article 14.3.2 Code would contravene the GDPR.

3.3.3. In other words, also when the national DPA **prohibits** the NADO from fully or in part complying with Article 14.3.2 Code, WADA will:

- pursue any failure to publish all mandatory elements as an (alleged) non-compliance with the Code in accordance with the ISCCS; and
- **CAS** (and *not* the national DPA) will, in accordance with the provisions in the ISCCS[6], be the body that decides whether any publication of the mandatory elements of Article 14.3.2 Code would mean a violation of national data protection laws, including the GDPR.

3.3.4. This interpretation of the Code by WADA creates numerous complications.

a. In such a situation, WADA would not respect national law in an area (i.e. protection of privacy) where it has been given no legal mandate by the national legislative body, also not by the UNESCO Anti-Doping Convention.[7]

b. In domestic situations where a country has chosen to implement the World Anti-Doping Code through specific doping legislation, there is a pending discussion between WADA and governments about whether WADA will then have a say in assessing whether that legislation complies with the Code. However, due to the fact that Article 14.3.2 Code does not address anti-doping legislation, but data privacy legislation (and the GDPR), the question arises on what basis WADA could claim legal authority to overrule a decision by a national DPA deferring the question whether the Public Disclosure as required by Article 14.3.2 Code would result in a breach of other applicable laws, to CAS. CAS has no legal authority to overrule decisions by national DPA based on national data protection laws and the GDPR. This authority has been granted by the national legislators to their DPAs.

c. If the Code would instruct a NADO to disregard a formal decision by a national legal authority such as the DPA that would mean that a NADO gets stuck between a rock and a hard place. If WADA would apply the ISCCS to this NADO to start a non-compliance procedure this would put pressure on this NADO to ignore or depart from a binding national decision. This would make this NADO subject to legal action and sanctions by the DPA.

d. CAS does not have the authority to review formal decisions of a national legal authority that does not fall within the scope of the Code and the International Standards, nor within the jurisdiction of WADA. This is the exclusive domain of national law.

e. Doping Authority does not have the liberty to submit a WADA allegation of non-compliance pertaining to a national DPA's decision to an private law arbitration institution like CAS. This would constitute a violation of the national legal order.

3.3.5. As a signatory to the Code, the Doping Authority has an obligation to comply with this Code and the International Standards, but the Doping Authority is also a public authority, established by law, that is required to follow and respect national laws, decrees and decisions by legal authorities that are binding.

3.3.6. In the past, discussions regarding data protection between WADA and Europe have put relationships between European governments and WADA under enormous strain. A reoccurrence of such a scenario should be avoided.

#### 3.4. Recommendation:

The comment to Article 14.3.2 must be modified to the extent that situations as described above where:

a. a NADO, by respecting domestic decisions by an authorized entity or court, would face a non-compliance procedure by WADA; and

b. decisions by domestic authorities and courts outside the scope of WADA, i.e. the principles of the Code, may be referred to CAS for review,

are prevented and avoided.

#### 4. Definition 'In-competition' (Definition)

##### 4.1. Topic:

The scope of the alternative definition by an International Federation (IF).

##### 4.2. Relevant provision:

The definition of 'In-Competition' in the Code is:

*The period commencing at 11:59 p.m. on the day before a Competition in which the Athlete is scheduled to participate through the end of such Competition and the Sample collection process related to such Competition. Provided, however, WADA may approve, for a particular sport, an alternative definition if an International Federation provides a compelling justification that a different definition is necessary for its sport; upon such approval by WADA, the alternative definition shall be followed by all Major Event Organizations for that particular sport.*

##### 4.3. Issue:

4.3.1. Having a clearly defined starting point of the In-Competition period in the Code is important. This is especially so for Substances of Abuse cases where it is often not clear when the athlete used the substance.

4.3.2. The Code definition of 'In-Competition' allows for an exception to the standard fixed time of 11:59 p.m. The last sentence of the definition states that IF may, after approval by WADA, use an alternative definition of 'In-competition'.

4.3.3. What is not mentioned in the definition of 'In-Competition' is whether or not an alternative IF-definition shall be applied at the national level. However, if an alternative IF-definition would apply at the national level in a particular sport, that would create a problem.

4.3.4. It is very important for NADOs to apply one set of doping rules at the national level, including one fixed definition of 'In-Competition', across all sports. A situation in which NADOs would be required to apply definitions of 'In-competition' that vary from sport to sport would be a departure from the Code's objective (harmonization) and could cause mistakes in the Results Management and adjudication process.

#### 4.4. Recommendation:

The definition of 'In-Competition' should clarify any alternative IF-definition does not apply at the national level.

### 5. One-Year Reduction for Certain Anti-Doping Rule Violations Based on Early Admission and Acceptance of Sanction (Article 10.8.1)

#### 5.1. Topic:

One-Year Reduction for Certain Anti-Doping Rule Violations Based on Early Admission and Acceptance of Sanction

#### 5.2. Relevant provision:

Article 10.8.1 Code, including the comment.

#### 5.3. Issue:

The comment to Article 10.8.1 Code indicates that an athlete has the sole discretion ("the Athlete may unilaterally reduce") to control whether the reduction applies. However, Article 10.8.1 Code states that "an Athlete or other Person may receive a one-year reduction", suggesting that the ADO has an option to apply this rule to a given situation. The ISRM confirms this by referring to an individual "potentially" receiving a reduced period of ineligibility. Or are the references to "may" (in the Code) and "potentially" (in the ISRM) intended to (a) refer to the Article 10.8.1 Code being available for a limited period only, or (b) a review to whether the admission by the Athlete is full and truthful?

#### 5.4. Recommendation:

5.4.1. The Code should provide clarification regarding the questions described in 5.3.

5.4.2. Doping Authority Netherlands recommends to limit the 21-day period to the stage of initial notification phase under Article 5 ISRM. Otherwise, Athletes will have the opportunity to wait weeks or months before admitting the commission of an anti-doping rule violation, and this will, obviously, interfere with the process. Therefore, Article 10.8.1 Code should *only* be available at the stage of the initial notification phase under Article 5 ISRM, because only in that limited period admission can be deemed 'early'.

#### Miscellaneous

Article 4.3 Code. The prohibited list criteria are such a fundamental aspect of the anti-doping program that we consider it necessary that these criteria will be discussed periodically. We especially recommend to discuss the spirit of sport criterium during the current Code review process.

Article 4.5 Code. Recent discussions have learned us that the fact that the results of the Monitoring Program are considered confidential is cemented in the sentences "WADA shall make available to International Federations and

National Anti-Doping Organizations, on at least an annual basis, aggregate information by sport regarding the monitored substances. Such monitoring program reports shall not contain additional details that could link the monitoring results to specific Samples. WADA shall implement measures to ensure that strict anonymity of individual Athletes is maintained with respect to such reports.” We would like to emphasize that the way in which the Monitoring Program results are currently made available guarantee the required anonymity and as such the current Monitoring Program overviews should not be considered ‘confidential information’. As a matter of principle we feel that ADOs should be as transparent as possible. But since both WADA’s scientific department and the chair of the List Expert Advisory Group have explained in recent years that these overviews cannot be made public because of the current wording in the WADC, we strongly suggest to change the wording of the current article 4.5 to explicitly mention that these anonymous results should be made available to the general public as well, very much in the same manner as all AAFs and ADRVs are made available.

[1] In some countries where funding is provided by the government or an NOC, this may be used as an instrument against a NF. However, when no such funding is provided or the NF can ‘survive’ without such funding, the NADO is completely powerless.

[2] Article 20.4.1 Code: Roles and Responsibilities of National Olympic Committees and National Paralympic Committees: To ensure that their anti-doping policies and rules conform with the Code and the International Standards.

[3] ‘Doping Control’ is defined in the Code as: “All steps and processes from test distribution

planning through to ultimate disposition of any appeal and the enforcement of Consequences, including all steps and processes in between, including but not limited to, Testing, investigations, whereabouts, TUEs, Sample collection and handling, laboratory analysis, Results Management and investigations or proceedings relating to violations of Article 10.14 (Status During Ineligibility or Provisional Suspension).”

[4] Not “or” as it currently says in the definition of ‘Anti-Doping Organization’.

[5] General Data Protection Regulation.

[6] Article 9.4 ISCCS: Determination by CAS.

[7] To clarify, the ISCCS dates from after the UNESCO Anti-Doping Convention and for that reason it is not one of the principles of the Code to which State Parties have committed themselves (see Articles 3 (a) and 4.1 of the UNESCO Anti-Doping Convention).

## Sport Integrity Australia

Chris Butler, Director, Anti-Doping Policy and International Engagement (Australia)  
NADO - NADO

SUBMITTED

### General

#### *Simplifying the Code*

We would like to suggest that the Drafting Team give consideration to ensuring, as best as possible, the Code is a clear and concise document that is easily accessed, interpreted and applied while remaining a robust set of consistent and harmonised anti-doping rules. As changes are considered for drafting, wherever possible they should look to clarify, simplify, and provide flexibility to the Code rather than add complexity. If ADOs are struggling to understand or interpret aspects of the Code, then undoubtedly Athletes are too.

One way this may be achieved is by transferring some more of the detail included in the Code to a relevant International Standard. This would provide clear overarching rules while also allowing for more regular revision of the rules (through the process for amending the International Standards and Technical documents) while still

ensuring the provisions remain legally enforceable. Additional material informing the application of the rules would still be included in guidance materials..

We also suggest WADA may wish to consider lengthening the timeframe between Code revisions (so long as options are maintained for urgent changes if necessary, and, if as suggested above, more detail is included in International Standards which can be more regularly amended). Given the extensive consultation process undertaken by WADA, we find ourselves in situations where the current version of the Code has only been in place for less than three years before consideration is being given to changing it. In many cases (particularly given the timeframes involved in complex CAS cases) this makes it difficult to truly understand the impact the 2021 Code is having and to fully understand whether the newer additions (substances of abuse for example) are working or not.

#### *Minimum mandatory standards with increased flexibility to implement other areas of the Code*

We also encourage the Drafting Teams to only consider mandating (in both the Code and Standards) those rules that must be applied consistently across all persons and organisations bound by the Code to achieve a fair and harmonised approach. Mandating too many elements, where not fundamentally necessary, creates additional burden and costs on ADOs that may ultimately be unneeded. A balance is required that achieves harmonisation while allowing flexibility (closely managed by guidance materials and examples) above and beyond the minimum standards to achieve the anti-doping goals.

#### *A streamlined, coordinated sanctioning regime*

As noted under Code Concepts #5 and #6, any amendments to any of the provisions dealing with the imposition of a period of Ineligibility under the Code (such as Article 10.7: Substantial Assistance etc and Article 10.8) must be aligned to ensure they achieve the desired outcome, and do not create duplication, or confusion or lead to unintended consequences.

When sanction reductions are being considered, it must be clear which provision/s of the Code applies—any solution designed to increase flexibility must be balanced with the need to provide clear rules that are easily understood and applied.

It is also important to formulate rules that set clear parameters whilst also allowing for appropriate discretion to be applied (taking into account the circumstances of the case) to achieve a flexible, consistent and fair approach.

#### **ADRV for non-cooperation**

We support the comments made by some other organisations suggesting the Drafting Team gives consideration to the creation of an ADRV for non-cooperation with anti-doping investigations. Currently this is covered in Article 21 but the comments to the section outline that it is not an ADRV and should be covered by a disciplinary approach under the signatory's rules. We would support further consideration of whether such an ADRV is needed and how it might work in practice.

Our experience is that despite a legislative framework, the current disciplinary approach is not a good compliance mechanism particularly regarding sophisticated intentional doping.

#### **Review of trafficking definition regarding substances subject of the substance of abuse provisions**

We would like to suggest that the Drafting Team give consideration to reviewing the definition of Trafficking regarding substances subject of the Substance of Abuse provisions. Guidance around the implementation of the Substances of Abuse indicated that those substances were included "because they are frequently abused in society outside the context of sport".

The current definition of Trafficking includes:

*"...and shall not include actions involving Prohibited Substances which are not prohibited in Out-of-Competition Testing unless the circumstances as a whole demonstrate such Prohibited Substances are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance."*

Given many of the Substances of Abuse do not have a legal and therapeutic purpose, despite the actions of the Athlete clearly not being intended to enhance sport performance, this results in a potential unintended consequence of the Athlete potentially being eligible for a reduced sanction under Substance of Abuse provisions but then subject of a Trafficking or Attempted Trafficking ADRV. Substances of Abuse could be excluded from the “...intended for genuine legal and therapeutic purposes...” which would then limit the impact of trafficking on those substances only where it is “...intended to enhance sport performance...” and puts the onus on the ADO to gather evidence of such.

## KADA

Shinhyeong jang, Legal / manager (Korea)  
NADO - NADO

SUBMITTED

Provides additional flexibility for lower-level athletes

### A. Improved regulations to ease TUE ‘approval conditions’ for low-ranking athletes

#### o Supplementation is needed to relax some of the TUE ‘approval conditions (meet the criteria)’

- TUE review is approved only if it meets the ‘Application Conditions’ and ‘Approval Conditions.’ According to the Korea Anti-Doping Rules, the ‘application conditions’ are being relaxed by allowing athletes who do not meet the international or national level to apply for TUE afterward, but ‘approval conditions’ have not been relaxed. There seems to be room for improvement by stipulating in ISTUE to relax some of the ‘approval conditions’ when low-ranking athletes apply for TUE and specifying them specifically in accordance with the regulations of each anti-doping organization.

## Anti-Doping Norway

Martin Holmlund Lauesen, Director - International Relations and Medical (Norge)  
NADO - NADO

SUBMITTED

We would encourage an inclusion into the Code and the ISRM of all elements of the Council of Europe Recommendation CM/Rec (2022)14 of the Committee of Ministers to member States on general principles of fair procedure applicable to anti-doping proceedings in sport. Including related to the public nature of the hearings. Our experience is, that there is a public interest in doping cases in particular at the top-level. Public hearings would contribute to transparency, and therethrough also to increasing the credibility of and public trust in the anti-doping system. We have taken note, that hearings can be held in camera in the interest of protecting privacy, but this should be based on a case-by-case assessment.

We would encourage you to reconsider the exception in art. 10.3.1 (iii) for recreational athletes. We have experienced refusals from recreational athletes, selected based on intelligence indicating their use of S1 substances. As a result they receive a two-year ban instead of a four-year ban.

We support the views expressed by the NADO EAG related to ensuring a legal basis in the Code for WADA to apply new/increased consequences to non-compliant Signatories after the expiry of the original set of consequences. It will be difficult to ensure proportionality in new/increased sanctions based on the situation/progress of non-compliant signatory within the current rules (as of 2024), which will require WADA to specify those consequences in its original decision, which will thus not take progress achieved by the non-compliant signatory into consideration. We understand that a change of the Code may be required to allow for this.

## UK Anti-Doping

UKAD Stakeholder Comments, Stakeholder Comments (United Kingdom)  
NADO - NADO

SUBMITTED



## Non-cooperation with anti-doping investigations

Conducting anti-doping investigations is an increasingly important and essential tool for ADOs in the fight against doping in sport, as clearly demonstrated by WADA's ongoing investment in global capacity building in this area. Furthermore, the majority of the 11 ADRVs in the Code require the conduct of an investigation in some form in order to be proved.

Key to the efficacy of investigations is the cooperation by those bound by anti-doping rules. Indeed, as we know, under the current Code, Article 21.1.6, those bound by anti-doping rules are required "to cooperate with Anti-Doping Organizations investigating anti-doping rule violations". However, should an individual bound by the anti-doping rules refuse to cooperate with an investigation (e.g. they refuse to attend an interview, or refuse to provide an electronic device – where the ADO is able to make such 'demands'), this presents a significant challenge. In the absence of a legislative or disciplinary framework to fall back on, many (N)ADOs have no ability to enforce any repercussions on those failing to cooperate with an investigation. Even with the presence of a legislative or disciplinary framework, inconsistency is created across countries and sports, ultimately with Athletes and Athlete Support Personnel being treated inconsistently. This therefore creates an incentive for those bound by anti-doping rules (e.g. Athletes/Athlete Support Personnel) to obstruct investigations through such actions, therefore significantly hindering the effectiveness of investigations.

UKAD therefore requests WADA to address this through the current 2027 Code Review process. By incorporating a resolution to this issue in the Code, this will give ADOs the power and ability to address these issues, but will also create a more harmonised approach across sports and nations. UKAD would make the following additional points on this matter:

- A recommendation that 'obstructing/not cooperating with an investigation' is addressed in the Code. UKAD is open to the mechanism and drafting for how to address this, and this will warrant further stakeholder discussion, however UKAD would suggest for consideration, the creation of a new ADRV (e.g. Obstructing an investigation). This would ensure that the obligation to cooperate with an investigation is enforced in a similar manner to the obligation on an Athlete to provide a Sample (which is achieved by the Article 2.3 Failure/refusal to submit to Sample collection ADRV).
- UKAD recognises that 'obstructing an investigation' can take varying degrees of perceived seriousness. For example, the refusal of an Athlete witness (not suspected of ADRV) to answer questions in an interview will be seen very differently to the refusal by an Athlete (suspected of an ADRV) to hand over their electronic device. Furthermore consideration would need to be given to a person's 'right to remain silent' and preservation against self-incrimination.
- Therefore any sanctioning framework would need to be considerate to these degrees of seriousness. UKAD considers that in some circumstances, where there is an appropriate degree of seriousness, parity of sanction with an ADRV should be applied (i.e. similar to how a Refusal ADRV may carry the same sanction as a presence ADRV). However, UKAD does not currently have a clear recommendation on the required proportionate sanctioning framework, but would encourage WADA to lead and facilitate stakeholder discussions on this matter.

UKAD feels strongly that the matter of obstructing/not cooperating with an investigation needs to be addressed in the Code, to incentivise cooperation with ADO investigations and enhance the effectiveness of investigations.

### Code 13.2 amendment (Whereabouts Failure appeal)

Article 13.2 of the Code opens with a list of the decisions that may be appealed. Missing from this list is the decision of the Results Management Authority that an apparent Whereabouts Failure should be cancelled (see B.3.2 of the 2023 ISRM, which states that WADA and the IF or NADO have a right of appeal).

#### Japan Anti Doping Agency

YUICHI NONOMURA, Result Management (??)

NADO - NADO

SUBMITTED

5.6 Retired Athletes Returning to Competition 5.6.2 - It would be useful to clarify the existing sentence like in the way that the retired athlete returning to Competition cannot compete for 6 months even after ADOs approved their reinstatement status.

Clarity can be given in the Code or provide a guideline how (procedures) "any competitive results shall be disqualified". Unless MEO, IF or NF who organise such competition include in their competition rules, it is difficult to apply this clause properly (it is out of ADOs authority).

"National Events" / "International-Events" / "International" or "National-Level Athletes" Some National-Level Athletes occasional becomes an International-Level Athletes because they compete in the International-Events that are identified by IFs. Operationally, it becomes quite challenges to make everyone understand about this procedure. Some guidance would be useful at which occasion this happens (when NADO-RTP as National-Level Athlete competes in International-Events, they becomes International-Level Athlete at that occasion only). Roles and Responsibilities Considerations can be done to give further clarities of National Federations role. Major Event Organizer's further responsibility for education before their Major Events can be given more weight. Inconsistency between the Code and ISE wordings can be streamlined.

Clean Sport - to be defined

ASP - to include sponsors or corporate companies supporting athletes and their support personnel (entourage)

Art.20.4.12 of WADC (Roles and Responsibility of NOC and NPC) to be strictly monitored and could be sanctioned by WADA under ISCCS. NOC and NPC are signatory to the WADC and should have responsibility to conduct education program under ISE. As for Olympic sport athletes, NOC should conduct some degree of education program under OVEP (Olympic Value Education Program) that covers quite a few requirements of ISE and NADO should not duplicate domestic education program over those athletes who receive NOC education program. WADA should recognize NOC's education program to the athletes and conduct CCQ over NOC's education activity (could be NPC's program too) so that duplication between NOC/NPC and NADO could be avoided.

The article of 2.10.1 should expand. The article should explicitly prohibit interaction with athletes (or non athletes) who openly state his and her use of performance-enhancing drugs, muscle-strengthening drugs, etc., or drug dealers.

### Swiss Sport Integrity

Ernst König, CEO (Switzerland)  
NADO - NADO

SUBMITTED

Issue: "CAS Decisions - There have been unreasonable delays by CAS Panels or CAS issuing written awards." CAS-proceedings are expensive and therefore there should not be any unreasonable delay. Swiss Sport Integrity proposes to include in the rules a requirement that reasoned awards must be issued by CAS Panels or Sole Arbitrators within 60 days of the close of the hearing or the written statement (if there is no hearing) absent exceptional circumstances. This is common practice in Swiss criminal law.

Issue: "Case Database - There is no easily accessible central database for all published arbitration decisions and awards."

Swiss Sport Integrity would encourage WADA to create an open access, searchable case repository for published arbitration decisions it receives, or to share its decisions with the already existing website [www.doping.nl](http://www.doping.nl) (The Anti-Doping Knowledge Centre), operated by iNADO and Doping Autoriteit. It would help jurisprudence.

### Anti-doping Bureau of Latvia

Mārtiņš Dimants, Director (Latvia)  
NADO - NADO

SUBMITTED

A few years ago, the case involving athlete Kamila Valieva highlighted a gap in the WADA Code. The Code outlines that, except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must establish how the Prohibited Substance entered their system. However, in response to the Kamila Valieva case, WADA stated that "the CAS panel decided not to apply the terms of the Code, which does not allow for specific exceptions to be made in relation to mandatory provisional suspensions for 'protected persons,' including minors." This implies that, according to the Code, protected persons are not obligated to prove the origin of the substance to apply No Fault or Negligence (NFN) or No Significant Fault or Negligence (NSFN). However, to lift an imposed mandatory provisional suspension, the protected person must demonstrate potential contamination of a supplement or the use of a substance of abuse. Although the Code suggests that the athlete needs to demonstrate, to the hearing panel, that the violation likely involved their substance, there appears to be a parallel with the

athlete's standard of proof, which is a balance of probability. Nevertheless, the athlete is still required to submit concrete evidence about the origin of the substance.

In light of this situation, LAT-NADO recognizes the need for WADA to address and rectify this gap in the WADA Code.

## Anti Doping Danmark

Silje Rubæk, Legal Manager (Danmark)

NADO - NADO

SUBMITTED

### **Virtual testing.**

During the Covid-19 pandemic, the International Standard for Testing and Investigations (ISTI) made it possible for sample collection in a virtual environment. This possibility still remains in the ISTI, annex K, with an additional guidance for Testing During the Covid-19.

We therefore suggest further exploration could be beneficial regarding the possibility of virtual testing in various settings, and not only during a pandemic.

The future is increasingly virtual, and it can be way more flexible for both NADO's, Athletes and others if there is an option to take samples in virtual settings.

An option to conduct sample collection in virtual settings is particularly envisioned to be viable with Dried Blood samples, as they potentially present fewer privacy concerns compared to urine tests.

### **Education for Hearing Panels.**

There is a consideration for the mandatory education of members of Hearing Panels. Given the distinctive legal nature of Anti-doping rules, which differs from the typical legal areas that panel members are accustomed to, and the unique context of the cases involved, it becomes increasingly essential to consider education to enhance the legal understanding of Hearing Panel members.

This approach could potentially mitigate the risk of inconsistencies in cases and potential misinterpretations of the rules. Further exploration of more explicit guidelines or demands for the education of Hearing Panels could be considered to ensure a well-informed and consistent application of Anti-doping rules.

## SEARADO

SUBMITTED

Gobinathan Nair, Director-General (Singapore)  
Other - Other (ex. Media, University, etc.)

Article 21.4 states on Roles and Responsibilities of the RADOs. Most of the clauses under this article involves promotion, ensuring etc. However, it does not give RADOs greater empowerment where the NADOs they are supporting ought to be not only listening but putting efforts to implement suggestions put forth by RADOs

## Freelance journalist

SUBMITTED

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

1. WADA and the stakeholders need to strengthen the anti-doping structure rather than dilute the existing standards and clauses. 2. There is a need to speed up cases. Quite often we find cases at national level are taking anything from three months to one year or more to resolve. Some international federations also find it tough to dispose of cases in three months or six months. If a case goes for appeal, one can be sure that the whole process from the charge being issued to the final verdict, which could be a clean chit, may take more than one year. 3. WADA needs to help ADOs find ways to bring uniformity in the application of rules. There are too many variations in decisions and sanctions at present. In poorer countries, athletes might be unable to get good lawyers because of paucity of resources. Conversely, hearing panels might arrive at a wrong conclusion, and it might not be always possible for WADA or the International Federation to appeal at CAS. 4. The "aggravating circumstances" clause is rarely applied across the world. In India, one might find a combination of steroids being detected in cases, especially in powerlifting, weightlifting and kabaddi, but there is never an extended ban, simply a standard four-year suspension. Article 10.8 is applied to provide a one-year relief to the athlete in cases where the possible sanction could be four years or more. But while applying 10.8, there is rarely an instance where ADOs also consider "aggravating circumstances" before applying article the 10.8 benefit. AIU/WA is probably the exception in regularly applying Article 10.8 in cases where there is use of multiple steroids or substances. 5. Even admissions under Article 10.8 are sometimes taking more than three months to resolve. The 20-day time-limit then becomes less relevant. Ideally, athletes should be asked to admit it within 20 days without going through the exercise of testing an assortment of supplements and delaying the process. 6. The cost of testing the 'B' sample is quite steep nowadays, making it impossible for poorer athletes to afford it. Some system has to be worked out to help needy athletes get the 'B' test done. 7. There has been a lot of focus on education and awareness programmes of late at the national and international levels with WADA urging ADOs to boost the education programme. Consequently, through the years, ADOs, athletes, fans, administrators and others have started to argue that athletes are failing tests and being punished due to lack of education as they are unaware of anti-doping rules, prohibited substances, TUEs, how to avoid unintentional ingestion etc. This is far from the truth. The majority of the athletes are aware of basic anti-doping rules and the consequences. They might not be (and need not be) aware of all the drugs in the WADA prohibited list (even the doctors are not aware of), for, one does not normally need most of the medicines listed in the banned batch. As for some of the medicines found in cough syrups or painkillers, asthma medications or skin ointments, the athletes are being advised constantly by the authorities to be careful. Organizing awareness campaigns in sport where there is hardly any doping or testing (roller ball, rock climbing, finswimming for example) is a waste of time and resources even as prospective "dopers" in other mainline sports, especially weightlifting, athletics, swimming, cycling, wrestling etc are busy doping. Emphasis should be more on such sports that are more vulnerable even when it comes to education and awareness so that this constant claim that "our athletes are not aware of anti-doping rules" could be countered.

## WADA NADO Expert Advisory Group

SUBMITTED

Martin Holmlund Lauesen, member (Norge)  
Other - Other (ex. Media, University, etc.)

The Code should allow WADA to apply additional/increased/new sanctions to Signatories who do not satisfy the reinstatement conditions by a set deadline, after that deadline has expired (as opposed to the added parenthesis in art. 10.2.9 in the ISCCS entering into force in 2024). WADA has previously expressed, that this would require a change of the Code, which we would welcome. If additional/increased/new sanctions are decided by WADA, the non-compliant Signatory should have the right to dispute this decision to CAS, just like in the first instance and could be subject to the original consequences until a potential CAS-decision has been made to change the

sanctions.

### International Testing Agency

International Testing Agency, - (Switzerland)

Other - Other (ex. Media, University, etc.)

SUBMITTED

- Mandatory obligations to investigate (Article 20.3.12 for IF and 20.5.12 for NADOs) - to be clarified and moved in the ISII
- Optional Provisional Suspension: requirements to apply it and grounds to lift it.
- RMA for retroactive TUEs when the RMA for the AAF is not the ADO who is generally in charge of TUE aspects.
- New evidence (breach of PS; didn't complete the substance of abuse treatment) – possibility to re-open case
- Article 14.1.2 allowing the RMA to notify only the athlete and WADA in the event that notifying the NADO/IF/NF could preclude the investigation or chance of getting substantial assistance.
- Definition of Doping Control: including education in the activities mentioned in the definition, to ensure that the ADRV for Tampering cover any fraudulent conduct in the context of (mandatory) education requirements (e.g. falsification of certificates, etc.).
- Consider ways to explicitly extend the application of the Code to DCOs.
- Article 5.5: expand the obligation to maintain accurate lists in ADAMS for Testing Pools (on top of RTPs).
- Expand article 23.3 to better clarify (including via ad hoc guidelines) how to assess what qualifies as "sufficient resources".

### University of Toronto

Marcus Mazzucco, J.D. (Canada)

Other - Other (ex. Media, University, etc.)

SUBMITTED

For the reasons set out below, it is strongly recommended that the World Anti-Doping Agency (WADA) amend the World Anti-Doping Code (WADC) to prohibit an anti-doping organization's use of doping control data to administer sex-based eligibility regulations that regulate the serum testosterone levels of intersex and trans women athletes. This amendment is necessary in order for WADA to comply with Canada's Personal Information Protection and Electronic Documents Act (PIPEDA).

Article 5.1 of the WADC provides that testing may be undertaken for any anti-doping purpose, such as obtaining analytical evidence as to whether an athlete's sample contains a prohibited substance or whether an athlete has used a prohibited substance in violation of the WADC. Importantly, however, the annotated comment to article 5.1 of the WADC (when read together with the annotated comment to article 23.2.2) states that, where testing is conducted for anti-doping purposes, the analytical results and data may be used for other legitimate purposes under the anti-doping organization's rules, such as monitoring compliance with sex-based eligibility regulations that apply to intersex and trans women athletes. This doping control data consists of the athlete's name, laboratory test results, and biological passport data, including steroidal blood marker values and ratios.

This use of doping control data that is permitted under the WADC has been incorporated into the regulations of at least nine international sport federations (IFs) that regulate the serum testosterone levels of intersex and/or trans women athletes: World Aquatics, Union Cycliste Internationale, World Athletics, the International Ice Hockey Federation, World Triathlon, United World Wrestling, World Taekwondo, the International Tennis Federation, and the International Skating Union.

Significantly, this use of doping control data to administer sex-based eligibility regulations is facilitated by WADA's Anti-Doping Administration Management System (ADAMS). Anti-doping organizations and WADA-accredited or approved laboratories are required to report doping control data to WADA through ADAMS, which effectively makes ADAMS a clearinghouse for all doping control data.

WADA is subject to PIPEDA in respect of the personal information that it collects, uses, or discloses in the course of its interprovincial or international activities. If an IF accesses doping control data in ADAMS for any purpose, then (according to PIPEDA) there is a disclosure of that data by WADA to the IF. WADA is the disclosing party because it is the data custodian that manages ADAMS.

WADA's disclosure of doping control data in ADAMS to an IF for the purpose of the IF's administration of sex-based eligibility regulations violates two key requirements in PIPEDA. The first requirement is that an organization may disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances (see subsection 5(3) of PIPEDA). The second requirement is that, where an organization requires an individual's consent to disclose their personal information, the consent must be voluntary, knowledgeable, and (in this context) explicit (see subsection 5(1), section 6.1, and clause 4.3 of Schedule 1 of PIPEDA).

An analysis of WADA's non-compliance with these two key requirements in PIPEDA has been provided in the form of a privacy complaint to Frédérique Horwood, Associate Director, Regulatory Affairs & Privacy, WADA. Please refer to this privacy complaint for more information.

In order for WADA to comply with the sections of PIPEDA described above, WADA must revise the WADC to prohibit IFs from using doping control data to administer sex-based eligibility regulations. There is already a precedent for such a prohibition with respect to an athlete's whereabouts information, which can only be used for anti-doping purposes, as per article 5.5 of the WADC.

This recommendation is consistent with WADA's other proposals for Concept #7, which seek to ensure that anti-doping data is only used to advance anti-doping purposes.

# 2027 Code & International Standard Update Process : Stakeholder Engagement Phase - World Anti-Doping Code

Bram van Houten, Policy adviser, Ministry of Health, Welfare and Sport (Netherlands)  
Public Authorities - Government

SUBMITTED

## Concept #7 – Use of Data

Regulations should be in line with existing national legislation and the limitations they present to what a nado could or could not do. This needs to be respected, and serve as a starting point for what the Code requires with regard to the use of data or publication thereof, and the implementation of these requirements.

The construct of setting a requirement and allowing for exceptions, as is currently in place for art. 14.3.2 Code and comment 91 for example, creates tension over which interpretation of existing national legislation to follow and is therefore not a suitable solution. We would therefore suggest to not make this requirement mandatory.

## Concept #8 – NADO Operational Independence

The standard should refrain from being prescriptive in how to achieve operational independence. Each national system is different and has its own intricacies to take into account. There should be sufficient flexibility for nado's and public authorities to achieve operational independence in a way that fits well in the national legal order, in addition to fulfilling Code-requirements.

## Concept #9 – Uncorrectable Non-Conformities

This is a very abstract concept, which makes it unfit for the detailed compliance monitoring system that WADA knows. It should therefore be deleted.

## Other Comments / Suggestions

The Netherlands' Government would suggest taking into consideration five additional concepts, relevant for the update of the Code and all Standards. They are listed below in full, and will be submitted in the comments for individual standards where we deem necessary, but in our opinion are relevant for the entire Code-update exercise.

### Responsibility where it belongs

In WADA's current compliance monitoring parties are held responsible for actions for which they bear no responsibility. For example, the Executive Committee regularly decides on compliance in which the responsibility for adjusting national legislation is placed with national anti-doping organisations. This should be changed. All stakeholders should be held responsible for actions for which they actually bear responsibility. Part of that is also that stakeholders are accountable for their actions in the correct framework (and for public authorities, who have legislative authority, that framework is the Convention).

In addition, sanctions imposed by WADA often impact parties who have no part in the non-conformity for which the sanction was imposed: when a nado is sanctioned by WADA, oftentimes part of that sanction is that the country from which the nado hails can no longer host or bid for international level sporting events until the non-conformity has been satisfactorily addressed; that national from that country can no longer participate in certain sporting events, and that the national flag of that country cannot be flown at certain sporting events. These measures are imposed for their deterring effect (ref. art. 10.2.4 ISCCS). We think it is improper that parties are sanctioned for situations they have no part in. This, too, should be changed.

### Proportionality in sanctioning

The sanctions WADA can impose are generally severe, and sanctions put forward in case of a non-conformity are

often disproportionate. The ISCCS has a provision that consequences of non-compliance with the Code should reflect the nature and seriousness of the non-compliance (art. 10.2.1 ISCCS). It also holds a provision that sanctions should deter further non-compliance (art. 10.2.4 ISCCS). The second consideration seems to have the upper hand, which should change. It should be more predictable what type of sanctions can be expected for what type of infringements, taking into account the need for more proportionate sanctions.

#### Direction in interpretation

It is necessary stakeholders be given more direction and insight in how the Code is to be interpreted. When stakeholders have to implement the Code in a situation where it is not possible to implement it to the letter, possibly because that would not sit well within the national legal framework it is implemented in, it has to be clear what the spirit and intention of a Code-provision is so stakeholders can do it justice as stakeholders implement it in a way that fits in the national legal framework. This facilitates harmonization of decentral implementation of the Code. But such direction, or a document providing it like an explanatory memorandum does for legislative proposals, currently does not exist for the Code and Standards. Currently, stakeholders discover exactly how a Code-provision is interpreted when a non-conformity is announced by WADA. This makes the global system and this part of compliance monitoring unnecessarily unpredictable.

#### Less detailed regulations

The amount of regulations and detailed instructions from WADA that nado's need to stick to is becoming unworkable. There are currently eight international standards that each specify in detail what a nado should do on a certain subject. This will be expanded with a ninth standard. Every nado has their hands full supplying WADA with the information requesting for compliance monitoring. This needs to change, because it takes away from the capacity that is available to fight doping in sport. If there is more direction in interpretation from WADA, and less detail in its regulations, this would open up possibilities.

#### Flexibility in implementation

One of the goals of the Code is to create a level-playing field for athletes. To this end, WADA pursues a harmonised system. Due to the meticulous compliance monitoring of WADA and the adjustments it requires, that harmonised system in practice looks more like a strongly standardised system or even a uniform system. There should be flexibility for the implementation of the provisions of the World Anti-Doping Code, harmonisation is not the same as uniformity. The goal is not only that athletes in competitions are held to the same anti-doping standards, but also that the national anti-doping systems that are created to make that happen themselves are robust and durable. A robust and durable system can only be created if the measures necessary to do so fit well in the national context, in a way that fits the national legal framework, and that do justice to the intent of the Code-provision at hand. It should be noted that it is the responsibility of the national government to ensure that measures fit appropriately in the national legal framework. And exactly for that reason it is necessary WADA offers a degree of flexibility for the implementation of the Code on a national level, and in its compliance monitoring.