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Summary of significant changes between the current 2015 Code and the proposed 2021

Code

Emphasis on Health as a Rationale for the Code

A recent decision of the European Court of Human Rights relied on public health as a primary basis for upholding the whereabouts requirements of the Code. As suggested by a number of stakeholders, health has been moved to the top of the list of rationales for the Code and is specifically mentioned in a sentence preceding that list. Additional changes were made at the request of WADA's Ethics Working Group to provide a better statement of the ethical foundation of the Code.

Fundamental Rationale: Athlete's Rights

WADA's Athlete Committee proposed that a document entitled Anti-Doping Charter of Athlete Rights be specifically referenced in the 2021 Code. Both the Olympic Movement and Public Authorities expressed concern over including a reference to this document in the Code. First, there is the general problem referencing a document where there is not yet an agreement on either the document name or its content. Second, there is specific concern that the Code and not a separate document, remain the controlling document for antidoping-related athlete rights. In the 2021 Code, the identification of athletes' rights in the Code has been specifically included as part of the Fundamental Rationale for the Code. The 2021 Code also continues to provide in Article 20.7.7 that one of WADA's responsibilities will be, in coordination with WADA's Athlete Committee, to approve a document that compiles in one place those athletes' rights that are specifically identified in the Code and also identifies any other agreed upon principles of best practice with respect to the overall

protection of athletes' rights in the context of anti-doping.

Delegation of Doping Control Functions by Anti-Doping Organizations

There has been some confusion under the current Code whether an Anti-Doping Organization (ADO) may delegate aspects of the doping control process and the extent to which it remains responsible following such delegation. The Introduction to Part One of the Code and Article 20 which sets forth stakeholders' responsibilities, make clear that ADOs are responsible for all aspects of doping control, that they may delegate any of those aspects, but they remain fully responsible for the performance of those aspects in compliance with the Code. A broad definition of the term "Delegated Third Party" has been added to the Code. A comment has been added to Article 20 which provides that "Anti-Doping Organizations should contractually require Delegated Third Party to whom they have delegated anti-doping responsibilities to report to the Anti-Doping Organization any finding of non-compliance by the Delegated Third Party."

Procedures Related to Split Samples (Article 2.1.2 and Article 6.7)

These Articles, together with the revised International Standard for Laboratories (ISL), permit a single A Sample or B Sample to be split and used for both initial analysis and both parts of the confirmation analysis. Where only a single bottle is to be used for analysis, the laboratory and ADO with results management responsibility must attempt to notify the athlete of the opportunity to observe the bottle opening. Much of the detail applicable to split samples has been moved to the ISL.

Expansion of Laboratory Reports for Atypical Findings Beyond Endogenous Substances (Article 2.1.4 and 2015 Code Article 7.4)

When a laboratory reports a sample as an Atypical Finding (ATF), that sends a message to the ADO that the Sample may or may not contain a prohibited substance. It is then the ADO's responsibility to conduct an investigation to determine whether the sample should be

treated as an Adverse Analytical Finding (AAF) or not. Under the original 2015 Code, a laboratory could only report test results involving endogenous substances as ATF. The 2021 Code permits WADA to develop a list of other prohibited substances which may be reported as ATF and thereby trigger investigations. This approach is particularly helpful when trace levels of clenbuterol are detected in a sample. It is well known that meat contamination in Mexico and China can cause trace levels of clenbuterol to appear in an athlete's urine. Historically, there was significant disparity in how different ADOs treat these potential meat contamination cases. The 2015 Code was amended by WADA's Foundation Board on 16 May 2019 to expand the category of ATFs beyond endogenous substance. The provisions of the 2021 Code and International Standards are consistent with that amendment.

Tampering (Article 2.5) and Definition of Tampering

In the 2015 Code, the act of tampering was described in Article 2.5, in a comment to Article 2.5 and in a separate definition of "Tampering." In the 2021 Code, all of that has been consolidated into the definition of "Tampering. At the request of a number of stakeholders, the acts of falsifying documents submitted to an ADO and procuring false testimony from witnesses have been moved up from the comment and specifically included in the definition of "Tampering."

Article 2.9: Attempted Complicity

"Attempted Complicity" has been added to "Complicity" as an Anti-Doping Rule Violation (ADRV) under Article 2.9.

Modification of Article 2.10 - Prohibited Association

This Article prohibits association in a sport related capacity with an athlete support person who is serving a period of ineligibility. Since this Article was incorporated into the 2015 Code, there have been very few, if any, ADRV cases brought under this Article. A number of ADOs have expressed concern that one reason for this is because the current requirement that an athlete

must be notified before an ADRV for prohibited association can be asserted, simply drives that prohibited association underground. In response to that concern, this Article has been changed to eliminate the advance notice requirement and instead, places the burden on the ADO to demonstrate that the athlete knew that the athlete support person was ineligible.

Addition of a New Article Providing Protection for Individuals Reporting Violations (Article 2.11)

This Article makes it an ADRV to threaten another person to discourage that person from the good faith reporting to authorities of information relating to an ADRV, non-compliance with the Code or other doping activity, or to retaliate against another person for doing so. The range of sanction for these violations is two years to lifetime ineligibility depending on the seriousness of the violation. (Article 10.3.6)

Burden Shifting (Article 3.2)

Modifications to Article 3.2.3 make clear that departures from the International Standard for Testing and Investigations (ISTI) involving sample collection or sample handling, or the International Standard for Results Management (ISRM) involving Adverse Passport Findings (APF) or whereabouts failures or notice to the athlete of the opening of the B Sample, which could reasonably have caused an ADRV, shift the burden to the ADO to establish that the departure did not cause the ADRV. A comment to Article 3.2.3 makes clear that an ADO can satisfy its burden of establishing that the failure to give notice of the B Sample opening did not cause the AAF, by having an independent observer witness the B Sample opening. Other violations of anti-doping rules or policies (such as a violation of the International Standard for Education) may raise compliance issues for an ADO but may not be used as a defence to an ADRV.

The Problem of Substances which are not Prohibited Out-of-Competition Appearing, in Trace Amounts, in In-Competition Samples (Article 4.2)

It has always been the case under the Code that some substances are prohibited at all times, and other substances are only prohibited in-competition. The general rule has been that if a substance appears in an athlete's sample in an in-competition test, it is an (AAF); it does not matter when the substance was taken. The consequences of this approach have become increasingly problematic as WADA-accredited laboratories have developed the ability to detect ever more minute quantities of prohibited substances in an athlete's urine in in-competition samples. In some cases, these substances were obviously used out-of-competition and could not possibly have had an in-competition effect. To address this problem, a special working group appointed by WADA is considering reporting thresholds for certain substances which are not prohibited out-of-competition but which may appear in trace amounts in in-competition tests. Recommendations from the working group would have to be approved by WADA's List Expert Group and ExCo.

Specified Methods (Article 4.2.2.)

The Code provides potentially different sanction schemes for non-specified substances and specified substances. Currently, all methods are non-specified. This change allows the List Expert Group, with subsequent approval from the ExCo, the flexibility to identify certain new or existing prohibited methods as "Specified."

Expanded use of the Monitoring Program. (Article 4.5)

In addition to monitoring substances already in the Monitoring Program, the modification to Article 4.5 provides that WADA may monitor data pertaining to other substances in order to see if they should be included on either the Monitoring Program or Prohibited List.

Retired Athletes Returning to Competition (Article 5.6)

Article 5.6 provides that when an international-level athlete or national-level athlete in a Registered Testing Pool (RTP) retires and then wishes to return to active participation in sport, the athlete must not compete in an international event or a national event until the athlete has made himself or herself available for testing by giving six months prior written notice to the athlete's International Federation (IF) and National Anti-Doping Organization (NADO). WADA is given the opportunity to make exceptions to the six-month rule in exceptional circumstances. Several stakeholders pointed out the problems which occur when an athlete wishes to compete in another unrelated sport, and also when an athlete cannot tell whether an event is or is not a national event (for example, where under national rules the event becomes a national event when a national level athlete is entered). New Article 5.6.1.1 makes clear that an athlete's competitive results are not disqualified if the athlete can establish that he or she could not have reasonably know that the event was an international or national level event. The requirement that exceptional circumstances must exist for WADA to grant an exemption has been removed. If the demand warrants, WADA will set up an expedited procedure to grant exemptions to the six-month rule for athletes who are clearly not international or national level competitors in the sport in which they are seeking to compete.

Use of Information from Sample Analysis (Article 6)

Changes have been made to this Article to make clear that analytical data from sample analysis and other Anti-Doping information, in addition to use for research purposes, may also be used for non-research purposes such as method development or to establish reference populations, provided that the information must be processed in a manner as to prevent it from being traced back to a particular athlete.

Use of Other Laboratories to Establish Forensic Facts Other than the Presence of a Prohibited Substance under Article 2.1 (Article 6.1).

This new Article makes clear that for purposes of an AAF under Article 2.1 only the results of WADA-accredited or -approved laboratories may be used. However other forensic analysis, (e.g., fingerprinting or DNA analysis) may be conducted by laboratories that are not WADA accredited or -approved so long as their evidence is reliable because, under Article 3.2, an ADO may establish facts by any reliable means.

Further Analysis of Samples (Articles 6.5 and 6.6)

The Article addressing further analysis of samples has been broken into two parts: AAF, there is no limitation on repeated analysis of the sample. After the athlete has been notified of an AAF, additional analysis may take place only with the consent of the athlete or the hearing body in the case. The rationale for this is that once an athlete has been notified of an AAF, he or she should not be forced to react to a moving target in terms of the sample analysis during the course of the hearing process. If further analysis is appropriate, then that may be directed by the hearing body.

Article 6.6 - When a sample has been declared negative, there is no limitation imposed on either the ADO that initiated and directed sample collection or WADA conducting further analysis (retesting) on the sample. Other ADOs with authority over the athlete wishing to conduct further analysis on a sample must get permission to do so from either the ADO that initiated and directed the collection of the sample or WADA.

WADA's Right to Take Possession of Samples and Data (Article 6.8)

This Article reaffirms WADA's right to take immediate physical possession of samples and anti-doping data.

General Changes to Results Management (Article 7)

A number of stakeholders suggested detailed improvements to the results management process described in Article 7. Those improvements and much of the detail currently found in Article 7 has been moved into the new International Standard for Results Management (ISRM). Important principles of results management have been retained in Article 7, particularly those principles dealing with relationships between stakeholders. Those parts of Article 7 addressing how to process different types of ADRVs have been deleted from the Code and expanded upon in the ISRM.

Article 7.5.1 has been added to make clear that ADOs (other than Major Event Organizations (MEOs)) must not limit their decisions to a particular geographic area or sport. Currently, some ADOs limit their decisions so that other organizations must initiate their own proceedings to declare a person ineligible to participate in their events. This Article, together with new Article 15, gives the imposition of consequences by a Signatory worldwide effect in all sports without further action. An exception is made for results management decisions by MEOs where the athletes' only opportunity to appeal the decision by the MEO is through an in-games expedited process. Those decisions are not given effect beyond the major event and are turned over to the applicable IF for follow up results management. (Article 7.1.4 and 7.5.2)

WADA's Right to Require an Anti-Doping Organization to Conduct Results Management – (Article 7.1.5)

It has occasionally been the case that the ADO with Results Management Authority (RMA) has refused to conduct results management. It therefore becomes necessary that some ADO conduct results management in the individual case to determine whether or not an ADRV was committed. Article 7.1.5 makes clear that in this unique circumstance, WADA may demand that the ADO with RMA conduct results management and, if the organization refuses, WADA may designate another ADO with authority over the athlete to conduct the results management with its costs and attorney's fees reimbursed by the refusing ADO. An ADO's refusal to conduct results management shall also be considered an act of non-compliance.

More Rigorous Standards for Fair Hearings under Article 8

A number of stakeholders suggested that the fair hearing requirement in Article 8 be expanded. A significant concern expressed by many is that the "impartial hearing panel" requirement in Article 8.1 is not being followed by all Signatories where, for example in some cases, the same individual is involved in the investigation, the decision to charge an ADRV and the hearing on whether a violation has been committed. Article 8 now requires that the hearing panel be "Operationally Independent" from the investigation, the decision to charge and the prosecution of the case. "Operational Independence" has been made a defined term.

Comment to Article 10.2.3: Definition of Intentional

A new comment to Article 10.2.3 which is consistent with existing Court of Arbitration for Sport (CAS) decisions, provides that, unless otherwise specified in the Code, "Intentional" means that the person intended to commit the act which forms the basis of an ADRV regardless of whether the person knew that such act constituted a violation of the Code.

Substances of Abuse – Article 10.2.4

We received considerable stakeholder feedback that sanctions for street drugs remain a significant problem under the Code. Cocaine is a particular problem.

Concerned stakeholders made the following points:

- Use of these drugs is a problem for society in general unrelated to sport performance.
- The Code only prohibits use/presence of these drugs in-competition. While stimulants like cocaine can clearly have a performance enhancing effect when used in-competition, often the quantity detected in-competition strongly suggests that the use occurred out of competition in a social context with no effect on sport performance.
- In cases where an athlete has a drug problem, and not a performance enhancement problem that effects the level playing field, Signatories should prioritize the athlete's health.

- Substantial resources are being spent arguing in hearings over the appropriate length of sanction in substances of abuse cases. These resources could be better spent on antidoping investigations or ADRVs which really do affect the level playing field of sport.

Based on this stakeholder input, new Article 10.2.4.1 provides as follows:

1. WADA's List Expert Group will identify those substances on the Prohibited List which are often abused in society outside of sport as "Substances of Abuse." The List Expert Group has the expertise to do this.
2. In order for Article 10.2.4.1 to apply, the athlete must establish that the use occurred outof-competition and was unrelated to sport performance.
3. The period of ineligibility is a flat three months with no argument over No Significant Fault, etc. (This eliminates the need for expensive hearings on the appropriate length of sanction.)
4. The athlete can reduce the period of ineligibility down to one month by completing a rehabilitation program satisfactory to the RMA. (This addresses the athlete health concern.)

Article 10.2.4.2, provides that where the athlete can establish that in-competition use of a substance of abuse was unrelated to sport performance, then the use shall not be considered "intentional" for purposes of the 4-year period of ineligibility for intentional use provided in Article 10.2.1.

Added Flexibility in Sanctioning for Refusal to Submit to Sample Collection (Article 2.3) or Tampering (Article 2.5) (Article 10.3.1)

The sanction provided in the 2015 Code for Refusal and Tampering Violations was four years ineligibility, however, there may be exceptional circumstances where a lesser sanction is justified. Article 10.3.1 has been amended to provide that in exceptional circumstances, the period of ineligibility shall be in a range of 2 to 4 years.

Fraudulent Conduct During Results Management and Hearing Process (Article 10.3.1)

A number of ADOs have experienced problems with athletes engaging in fraudulent conduct during the results management and hearing process, including for example, submitting

fraudulent documents or procuring false witness testimony. Under the current Code, there is no downside in terms of sanctions to an athlete who chooses to engage in this type of behavior. At the suggestion of a number of stakeholders, the definition of “Tampering” has been expanded to specifically include fraudulent conduct during results management. Tampering during results management would be treated as a separate first violation with the period of ineligibility, 2 years (in exceptional circumstances) to 4 years, to be served consecutively with any period of ineligibility imposed for the underlying violation.

Increasing the Upper End of the Sanction for Complicity (Article 2.9) (Article 10.3.4)

The current sanction for an ADRV involving complicity is 2-4 years ineligibility. However, in some circumstances, violations involving complicity can be very similar to violations involving "administration" (Article 2.8) where the current sanction is 4 years to life ineligibility. To retain some greater flexibility in the sanctioning of certain types of complicity, but to avoid any argument that the most serious types of complicity, which could also be viewed as administration, are subject to a sanction cap of 4 years, the range of ineligibility for complicity has been changed in Article 10.3.4 to 2 years – lifetime ineligibility.

Re-Introduction of the Concept of "Aggravating Circumstances" (Article 10.4)

The 2009 Code provided for the increase of the otherwise applicable period of ineligibility when aggravating circumstances were present. When the 2015 Code increased the period of ineligibility for intentional doping from 2 years to 4 years, the Aggravating Circumstances Article was deleted. The Aggravating Circumstances Article has been reinserted to deal with special or exceptional circumstances where an additional period of ineligibility from 0-2 years is appropriate.

Addressing the Problem of Common Contaminants in Supplements and Other Products (Article 10.6.1.2)

The ability of WADA-accredited laboratories to detect miniscule quantities of prohibited

substances in athlete samples has, in some cases, improved one hundred to one thousand fold over the last decade. This increased analytical sensitivity has made it easier to detect the tail end of the excretion curve from the intentional use of a prohibited substance. However, it has also increased the likelihood that an AAF may result from contamination of a supplement or other product. The current Code provides that in order for an athlete to receive a reduced sanction on account of product contamination, the athlete must be able to identify the contaminated product which he or she consumed which caused the AAF (2015 Code Article 10.5.1.2 in combination with the definition of “No Significant Fault or Negligence”). Generally, this is a good rule to protect the rights of clean athletes. However, there are cases where the AAF involves a very low level of a prohibited substance which is known to occur in contaminated products, but the athlete is not able to specifically identify the product which caused the AAF. In some of these cases, the AAF is much more likely the result of product contamination than the tail end of an excretion curve, but under the current rule no reduction of sanction is permitted. Rather than modify the rule in the current Code related to contaminated products, a better approach is to consider raising the reporting limits for those prohibited substances which are known contaminants. A special WADA working group is working on an approach to do this.

Expansion of the Types of Cooperation which Justify a Reduced Sanction for Substantial Assistance – (Article 10.7.1.1)

Under the 2015 Code, an athlete or other person who provides Substantial Assistance to an ADO, criminal authority, or a professional disciplinary body, in relation to ADRVs may receive a suspension of part of the otherwise applicable sanction. In the 2021 Code, Substantial Assistance credit may also be given for assistance provided in relation to establishing non-compliance with the Code and International Standards and other types of sport integrity violations.

Article 10.7 has been modified to provide that avoiding mandatory public disclosure in exchange for Substantial Assistance may be done with WADA’s agreement.

New Article Entitled Results Management Agreements (Article 10.8)

Articles 10.6.3 (Prompt Admission) and Article 10.11.2 (Timely Admission) have been eliminated and replaced with a new Article 10.8. Both of the prior Articles have been a repeated source of questions and misinterpretations.

The new Article 10.8 has two parts. Article 10.8.1 provides that where an athlete or other person who is facing an asserted period of ineligibility of 4 or more years admits the violation and accepts the asserted period of ineligibility within twenty days of notice of the ADRV charge, then there will be a reduction of one year from the otherwise applicable period of Ineligibility. This provides some incentive for the individual to admit the Anti-Doping Rule Violation and saves the ADO the cost of a hearing without being too lenient.

The second part of Article 10.8 (Article 10.8.2) provides an opportunity for the ADO, the athlete or other person and WADA to enter into a Case Resolution Agreement in which the applicable period of ineligibility can be agreed upon based on the facts of the case. The reduction possibilities permitted in a Case Resolution Agreement are not something that a hearing body is permitted to impose or review. Case Resolution Agreements are not appealable by anyone. As in the case of "Substantial Assistance," an athlete who is negotiating a Case Resolution Agreement is entitled to tell his or her story under a "Without Prejudice Agreement."

Improvements to the Multiple Violations Rules - (Article 10.9)

Two proposed changes to the Multiple Violations Rules are noteworthy. The rule in the 2015 Code is that an athlete cannot be charged with a second ADRV until he or she has been previously notified of a first violation. This makes sense in the circumstance where an athlete tests positive twice in the same one week doping cycle. In that case the athlete should not be subject to the increased sanction for a first and second violation. When an ADO discovers an earlier ADRV which occurred before notice of a first violation, the approach under the current Code has been to go back and consider the two violations together as a first violation for purposes of imposing the longer of the two sanctions. For example, under the current Code, if an athlete commits two 4-year ADRVs several years apart, but the first occurring violation is not

discovered until after notice has been given of the second occurring violation, then the combined period of Ineligibility would still only be 4 years. This is a particular problem when further analysis of old samples produces an AAF.

The 2021 Code addresses this problem in two ways. First, if the ADO can establish that a prior undiscovered violation occurred more than 12 months before the first sanctioned violation, then the later-discovered violation shall be punished as a first violation and run separately following the period of ineligibility for the previously discovered violation. This preserves the principle that a person does not get a "second strike" until he or she has been notified of the first strike, but yet maintains additional consequences for separate violations. For example, if it is discovered that an athlete who is serving or has already served a ban for a more recent ADRV also committed an ADRV more than 12 months earlier (for example when a sample from an earlier competition was retested), the athlete can be sanctioned for the later-discovered violation as a stand-alone violation but it would not count as a second violation going forward. (Article 10.9.3.2) Second, if a person commits a second anti-doping rule violation during a period of ineligibility, the period of ineligibility for the second violation is served consecutively after the period of the first violation (Article 10.9.3.4).

Finally, in Article 10.9.1, the formula for calculating the period of ineligibility for a second ADRV has been modified to make the result more proportionate and not so dependent on the order in which the two violations occurred. Under the 2015 Code, as a first example, an athlete with a 3-month period of ineligibility for a first violation and what would otherwise be a 4-year period of ineligibility for a second violation would receive a second violation sanction of 8 years (twice the normal sanction for the second violation). By contrast, as a second example, if the violations occurred in the opposite order and the athlete had received a 4-year period of ineligibility for the first violation and the otherwise applicable period of ineligibility for the second violation would be 3 months, under the 2015 formula, the athlete would only receive a sanction of 2 years (the greater of twice the second violation or half the first violation). The new Article 10.9.1.1 provides for a period of ineligibility for a second violation in a range between (1) the sum of the period of ineligibility for the first violation plus the otherwise applicable period for the second violation (in the above example, 4 years and 3 months) and (2) twice the period of ineligibility applicable to the second violation treated as if it were a first violation. In the first example described above, the ineligibility of the range would

be 4 years and 3 months to 8 years. In the second example, the ineligibility range would be 4 years and 3 months to 6 months. The opportunity to impose ineligibility for a second violation within a range permits a more proportionated response for a second violation.

Forfeited Prize Money Goes to Other Athletes (Article 10.11)

Athlete stakeholders have argued that forfeited prize money which has been ADO wants to recoup some of its costs in bringing the case, it is permitted to do so in Article 10.11. As modified, Article 10.11 now provides that when an athlete is required to forfeit prize money as a result of an ADRV and the forfeited prize money is collected by the ADO, ADO shall take reasonable measures to distribute the forfeited prize money to the athletes who would have been entitled to the prize money, had the forfeiting athlete not competed. It is left up to the rules of the sporting body whether any rankings which are based on prize money will be reconsidered.

Delays not Attributable to the Athlete or Other Person (Article 10.13.1)

Article 10.11.1 found in the 2015 Code allows hearing panels to start a period of ineligibility running from the date of the ADRV where there has been a delay in the process not attributable to the athlete or other person. A number of stakeholders expressed concern that hearing panels have gone too far in applying this Article. As a result, the Article now makes clear that the burden of establishing that delays are not attributable to the athlete or other person is on the athlete or other person, and a comment has been added noting that in cases involving lengthy investigations, particularly where the athlete or other person has taken affirmative action to avoid detection, the flexibility provided in this article should not be used.

Clarifications Relating to Sanctions for Violation of a Provisional Suspension (Article 10.14.3)

Failure to respect a Provisional Suspension is not a separate ADRV. A new provision has been added as Article 10.14.3 making clear that if an athlete violates the prohibition against participation during a Provisional Suspension, not only does the athlete receive no credit for any period of Provisional Suspension served, but also the results of such participation will be disqualified.

Express Authority of a Signatory to Exclude Athletes and Other Persons from its Events as a Sanction Against a Member Federation (Article 12)

The language added to Article 12 makes clear that discipline by the International Olympic Committee (IOC) or International Paralympic Committee (IPC) against a member National Olympic Committee (NOC)/National Paralympic Committee (NPC) or by an International Federation (IF) against a member National Federation (NF) may include exclusion of athletes from that country from its events. This is already the current practice under the 2015 Code. While the IOC, IPC, IF or NOC/NPC have authority to take action against their members for failing to implement Code-compliant anti-doping rules, and to take action when they become aware of such non-compliance by a member in the implementation of those rules, they are not affirmatively obligated to monitor their members' compliance as a requirement of their own Code Compliance.

Scope of Review on Appeal (Article 13.1.1).

This Article makes clear that any party to an appeal may submit evidence, legal arguments and claims which were not raised in the first hearing so long as they arose from the same cause of action or same general facts or circumstances raised in the first instance hearing. An example has been added in the comment to this Article to further clarify the point that a different ADRV charge may be asserted on appeal based on the same underlying facts.

Appeals Involving National Level Athletes (Article 13.2.2.)

Under the current Code, it is often the case that appeals by national level athletes are heard by national level appellate bodies, not by CAS. The amendment to this Article makes clear that where the structure of the national level appellate body is not fair, impartial, and operationally and institutionally independent, the athlete or other person shall have the right of appeal to CAS. Both “Operational Independence” and “Institutional Independence” have been made defined terms.

Public Disclosure (Article 14.3)

A number of stakeholders have commented that public disclosure as required by Article 14.3.2 may violate national law. A comment to Article 14.3.2 has been added to make clear that failure to make a public disclosure under 14.3.2 will not be considered a Code Compliance Violation where it is prohibited by national law.

A new provision, Article 14.3.3, has been added, which provides that after the initial hearing has been completed or waived, the ADO conducting results management may make public its determination or the hearing panel decision and may comment publicly on the matter. This has always been the case, but the right to do so has not been clearly spelled out in the Code.

Implementation of Decisions (Formerly Mutual Recognition) – (Article 15)

Two concerns with the current Code are addressed in the revisions to this Article. First, there has been some contention that when a Signatory recognizes the decision of another Signatory, that recognition decision is itself subject to appeal by the athlete or other person (as opposed to an appeal of the underlying decision). That was never the intent of the Code. As revised, Article 15 provides that with the exception of decisions by MEOs, where there is no opportunity for appeal outside of the fast track of the event structure, all the results management decisions of Signatory ADOs are automatically recognized worldwide in all sports. Because the implementation of the original RMA’s decision is automatic, and

therefore other ADOs make no separate implementation decision, only the original RMA has liability if its decision was wrongly taken.

The second issue with current Article 15 is the fact that mutual recognition of provisional suspension decisions is not discussed. As revised, the Article provides that all provisional suspensions are automatically binding on other Signatories.

Article 18 Education

Education is clearly a very important part of each Signatory's anti-doping program. Now that there is an International Standard for Education (ISE) which provides detail on the mandatory education requirements to be included in a Signatory's anti-doping program, the education Article of the Code has been shortened to include only the basic principles underlying the anti-doping education requirement. "Education" has been included as a defined term.

Obligation of Individual Signatory Participants to Agree to be Bound by the Code and for Signatories to not Knowingly Employ any Person Whose Actions Would Have Violated the Code had the Code Been Applicable to That Person (Articles 20.1.7 and 20.1.8 and comparable Articles for other Signatories)

Two new Articles have been added to the roles and responsibilities of each Signatory. For example, for the IOC:

20.1.7: Subject to applicable law, as a condition of such position or involvement, to require all of its board members, directors, officers, and those employees (and those of appointed Delegated Third Parties), who are involved in any aspect of Doping Control, to agree to be bound by anti-doping rules as Persons in conformity with the Code for direct and intentional misconduct and intentional misconduct, or to be bound by comparable rules and regulations put in place by the Signatory.

20.1.8: Subject to applicable law, to not knowingly employ a Person in any position involving Doping Control (other than authorized anti-doping education or

rehabilitation programs) who has been Provisionally Suspended or is serving a period of Ineligibility under the Code or, if a Person was not subject to the Code, who has directly and intentionally engaged in conduct within the previous six years which would have constituted a violation of anti-doping rules if Code compliant rules had been applicable to such Person.

Article 20.5: National Anti-Doping Organizations Conflict of Interest Policies

The 2015 Code requires National Anti-Doping Organizations (NADOs) to be independent in their operational decisions and activities. The 2021 Code expands on that by prohibiting any involvement in their operational decisions or activities by any person who is at the same time involved in the management or operations of any IF, NF, MEO, NOC, NPC, or government department with responsibility for sport or anti-doping.

Signatories' Expectations of Governments – (Article 22)

Concern was expressed by some of the public authorities and UNESCO over Article 22 which sets forth the Signatories' expectations involving anti-doping actions by governments. Two significant changes were made. First, the introduction to the Article makes clear that governments are only bound by the requirements of the UNESCO International Convention against Doping in Sport (UNESCO Convention), not by the expectations of the Signatories. Second, the word "should" instead of the word "shall" was used to describe each of the eleven separate subsections of Article 22 which set forth the Signatories' expectations. Additional expectations of the Signatories have been added including:

22.2: Access for doping control officials and unrestricted transport of urine and blood samples;

22.3: The expectation that governments should adopt rules to discipline officials and employees for engaging in conduct which would have violated the Code had the Code been applicable to those Persons.

22.4: The expectation that governments not allow anyone to be involved in their doping control, sport performance or medical care in a sport setting who in the previous 6

years has engaged in conduct which would have been a Code violation.

22.9: The expectation that governments should not limit or restrict WADA's access to any doping samples or anti-doping records or information held or controlled by any Signatory, member of a Signatory or WADA-accredited laboratory.

How Does a Sport Organization Become a Signatory? (Article 23.1)

Article 23.1 has been modified to provide that organizations recognized by the Olympic Movement may become Signatories by signing a declaration of acceptance or other form of acceptance approved by WADA. Other entities having significant relevance in sport may submit an application to WADA to become a Signatory under a new policy which will be adopted by WADA. That policy will set forth the conditions which must be met for these types of organizations to be accepted as Signatories by WADA, including for example, a financial contribution to cover WADA's administrative, monitoring and compliance costs related to that entity.

Code of Conduct, Medical and Safety Rules Permitted Under Article 23.2

Article 23.2 identifies those Articles of the Code where the sanctions for doping set forth in the Code are exclusive and no additional doping sanctions may be imposed by Signatories beyond those set forth in the Code. However, a new provision has been added to the end of Article 23.2.2 which makes clear that nothing in the Code precludes a Signatory from having safety, medical or Code of Conduct rules which are applicable for purposes other than antidoping. Thus, for example, excessive use of alcohol could not be called an ADRV because it is not prohibited in the Code. It could, however, be disciplined as a Code of Conduct Violation for bringing the sport into disrepute. The comment to Article 23.2.2 already makes clear that samples collected for doping control may also be used for other purposes such as enforcement of an ADO's Code of Conduct rules. That comment has been expanded to include as an example an IF's use of data from doping control tests to monitor its transgender eligibility rules.

Article 24 Code Compliance and Monitoring

The former Article 23 has been broken into separate Articles addressing Acceptance and Implementation (Article 23), Monitoring and Enforcing Compliance (Article 24), and Modification and Withdrawal (Article 25). The detailed rules addressing Code Compliance and monitoring are found in the International Standard for Code Compliance (ISCC) by Signatories. The most important substantive provisions are also set forth in Article 24.

Non-Retroactive Effect of Changes to the Prohibited List (Article 27.6)

This new provision in Article 27, Transitional Provisions, makes clear that changes to the Prohibited List and Technical Documents relating to substances on the Prohibited List shall not, unless they specifically provide otherwise, be applied retroactively. As an exception, however, when a prohibited substance has been removed from the Prohibited List, an athlete currently serving a period of ineligibility on account of that removed prohibited substance, may apply to the RMA which imposed the sanction to consider a reduction in the period of ineligibility in light of the removal of the substance from the Prohibited List.

Definition of In-Competition.

The 2021 Code provides a standard definition for “in-competition” which is the period commencing at 11:59 pm on the day before a competition in which the athlete is scheduled to compete through the end of such competition and the sample collection process related to such competition. However, as an accommodation to those sports where there are unique reasons for a different definition of in-competition, for example sports which have a pre-competition weigh-in, WADA may approve a special definition for that sport which will in turn be followed by MEOs conducting those sports.

“Protected Persons” and “Minors”

Under the 2015 Code, more flexible sanctioning rules were applied to minors (persons under 18) including:

- a. No requirement to establish how a prohibited substance entered the athlete’s system to benefit from the No Significant Fault or Negligence rule. (Definition of No Significant Fault or Negligence)
- b. Article 10.5.1.3: Minimum sanction is a reprimand when No Significant Fault is established.
- c. Article 14.3.6: Public Disclosure not mandatory.

The 2021 Code makes two important changes. First, these more flexible sanctioning rules are applied to an expanded class of athletes described as “Protected Persons” which also includes individuals who, for reasons other than age, have been determined to lack legal capacity under applicable national legislation.

Second, at the request of athlete representatives, elite 16- and 17-year old athletes are not included in the definition of “Protected Persons” because, considering their sport experience necessary to achieve that level of performance, they should receive the same treatment as the other elite athletes against whom they are competing. These elite 16- and 17-year old athletes would not benefit from the special flexible sanctioning rules set forth in (a) and (b) above. They would, as “Minors” however, be excused from the mandatory Public Disclosure rule in Article 14.3.2 as provide in Article 14.3.7.

New Category of Athletes – "Recreational Athletes" Permitted More Flexibility in the Imposition of Consequences

Under the current Code, ADOs are not required to test lower-level athletes, but if they do and an ADRVs results, then all of the consequences imposed by the Code apply. A number of the stakeholders who regularly test these lower-level athletes have pointed out that: they do so as a matter of public health and imposing full Code consequences (as opposed to rehabilitation) is

counter-productive to that objective; these lower-level athletes have not had the same antidoping educational opportunities as higher-level athletes; and the consequence of mandatory

Public Disclosure on the employment status of someone who participates in sport only at the recreational level is unduly harsh. A new Code definition describes these lower-level athletes as "Recreational Athletes." The determination of who is a recreational athlete is left to the NADO of the athlete's country, but must not include any athlete who in the prior 5 years has been: an international-level or national-level athlete; representing a country in an international event in an open category; or been in a Registered Testing Pool or other whereabouts pool of an IF or NADO. "Recreational Athletes" benefit from the same flexibility in sanctioning as protected persons.