

2027 CODE & IS UPDATE PROCESS

World Anti-Doping Code

Concepts for Consideration and Feedback

Executive Summary

The World Anti-Doping Code (Code) was first adopted in 2003 and took effect in 2004. It has been amended five times, in 2009, in 2015, in 2018 (compliance-related amendments), in 2019 (reporting of certain endogenous substances as atypical findings), and in 2021.

The Code is the fundamental and universal document upon which the World Anti-Doping Program in sport is based. The purpose of the Code is to advance the anti-doping effort through universal harmonization of core anti-doping elements. It is intended to be specific to achieve complete harmonization on issues where uniformity is required, yet sufficiently general in other areas to permit flexibility as to how agreed-upon anti-doping principles are implemented.

The Code Drafting Team has identified nine concepts for the upcoming revision of the Code.

Stakeholders are invited to provide their feedback on each of these key concepts, as well as identify any other topics they wish the Code Drafting Team to consider.

The Code Drafting Team will also work closely with each International Standard Drafting Team on key related topics.

Concept #1 – Lack of Intent without Establishing Origin

Case law relating to athletes, which have established a lack of intent (for anti-doping rule violations involving non-specified substances) but have not demonstrated how the prohibited substance(s) entered their bodies, has become increasingly inconsistent in recent years. In particular, this is the case with respect to the question as to how exceptional a case must be in order for an athlete to demonstrate a lack of intent without proving the source and type of evidence that is considered relevant within this context. This lack of consistency has led to unequal treatment of athletes and undermines the credibility of the fight against doping.

Accordingly, stakeholders are invited to provide their feedback on what the test/criteria should be for athletes attempting to prove a lack of intent when they cannot demonstrate the source. Among the avenues to be explored, the feedback of stakeholders is sought specifically on the following two proposals:

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

- 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.
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Concept #2 – Results Management of Substances of Abuse

The 2021 Code introduced, in Article 10.2.4, a specific sanctioning regime applicable to prohibited substances, which are defined as “Substances of Abuse” on the Prohibited List “because they are frequently abused in society outside of the context of sport” (see Code Article 4.2.3). In order to be eligible for a three-month period of ineligibility (which may further be reduced to one month if a Substance of Abuse treatment program is completed), the athlete must establish that the ingestion or use of a substance of abuse occurred out-of-competition in a context unrelated to sport performance.

However, the implementation of these provisions has raised several questions as to how this system should be applied. To harmonize approaches and ensure the consistent treatment of athletes, the Code Drafting Team is seeking stakeholder feedback on the following proposals:

- 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.
 - 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.
 - 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).
 - To clarify that this specific sanctioning regime can apply to other uses of those substances, e.g., coca tea or coca leaves.
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Concept #3 – Results Management of Whereabouts Cases

The sanctioning regime applicable to Code Article 2.4 anti-doping rule violations relating to three whereabouts failures committed within a twelve-month period, is described in Code Article 10.3.2:

A two-year period of ineligibility, which may be reduced down to a minimum of one year, depending on the athlete’s degree of fault, unless it can be established that the athlete was trying to avoid being available for testing.

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).
- 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.
- 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).
- 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”.

The Code Drafting Team is seeking stakeholder feedback with respect to each of the above points.

Concept #4 – Increase in Sanction Flexibility

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.

Provided an athlete can establish no significant fault or negligence, the Code Drafting Team intends to consider the addition of the 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.

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 circumstances of the case.

Concept #5 – Results Management Agreements

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.

As this mechanism has proven to be effective since 2021, the Code Drafting Team is seeking stakeholder feedback on the possibility of amending Code Article 10.8.1 as follows:

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.
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.

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.

Concept #6 – Substantial Assistance

Code Article 10.7.1 and the Code definition of “Substantial Assistance” set out the requirements a person must fulfill for their period of ineligibility and/or other consequences to be partly or fully suspended, depending on the seriousness of the anti-doping rule violation they committed, and the significance of the assistance provided to the effort to eliminate doping in sport. To this end, the person must provide (i) a signed written statement or, at least, a recorded interview (ii) disclosing all information in their possession, (iii) which must be credible and (iv) comprise an important part of any case brought, or which could have been the sole basis for bringing a case, and (v) must also fully cooperate with the investigation and adjudication of any matter arising from the information provided.

Although first adopted in the 2003 version of the Code, substantial assistance provisions have been invoked less regularly than originally hoped.

Therefore, in an attempt to improve this situation, the Code Drafting Team is considering lessening the associated requirements concerning causation, not least in order to create the possibility of applying substantial assistance at an earlier stage of the results management process. To this end, consideration could be given to introducing a two-stage process whereby the initial granting of a limited suspension (if credible information is provided) could be increased at a later stage depending on the outcome.

Stakeholders are also invited to comment on the possibility of:

- Removing the “seriousness of the anti-doping rule violation committed” criterion or make it a subsidiary criterion.
- Focusing on the value of the substantial assistance provided.

- 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).
 - 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).
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Concept #7 – Use of Data

The collection and processing of whereabouts information are highly regulated in the Code and International Standards. Considering the impact on athletes of requiring such information, ADOs have a duty to use it effectively to detect anti-doping rule violations. 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).

The rules regarding the use of samples and anti-doping data in research and quality assessment/improvement processes are no longer fit for purpose. A broader spectrum of stakeholders is actively engaging in a wider range of research. As set out in Code Article 19, anti-doping research contributes to the development and implementation of efficient anti-doping programs. 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.

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. This critical measure must be proportionate considering its impact on the privacy interests of individuals receiving such sanctions. 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); (ii) 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 (iii) 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.

Concept #8 – NADO Operational Independence

Code Article 20.5.1 is currently the sole provision which specifically sets out the operational independence requirements for NADOs. Given that the operational independence of NADOs has been identified as a key element in ensuring that NADOs deliver effective anti-doping programs and are independent from government and sport vis-à-vis their operational activities and decisions, the Code Drafting Team intends to consider, from stakeholders' feedback and experience, 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.

Concept #9 – Uncorrectable Non-Conformities

The existing compliance system under the International Standard of Code Compliance by Signatories (ISCCS) is tailored to incentivize Signatories to address and correct non-conformities. WADA alleges non-compliance and imposes consequences as a last resort, and only if non-conformities remain not corrected. However, WADA lacks tools when confronted with non-conformities which are no longer capable of being corrected. These non-conformities are not adequately caught by the existing compliance system, even though some of these non-conformities were committed deliberately, are severe in nature, and erode trust in the anti-doping system. This problem arises particularly often in cases identified by investigations. Another example of an uncorrectable non-conformity would be when a Signatory fails to enforce a consequence that is within their sphere of authority (e.g., a restriction on flying a national flag at an event). To address such scenarios, the Code Drafting Team proposes to introduce the concept of “uncorrectable non-conformities”.

The concept was submitted to stakeholder consultation during the 2022/2023 ISCCS revision. The feedback received during this process has been duly taken into consideration and is planned to be implemented in the 2027 Code & IS Update Process. Among others, the Code Drafting Team proposes 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.

In addition:

- The non-compliance would be determined according to the requirements of the Code or an International Standard in place at that time, i.e., 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.