

2027 Code & International Standard Update Process: Third Consultation Phase - World Anti-Doping Code

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

Article 3.2.6

GENERAL COMMENTS

Further clarification on what could constitute “reliable analytical evidence” would be helpful. Also, more guidance may be needed to the athletes on how to receive this evidence.

Article 4.3.1

GENERAL COMMENTS

SUGGESTED CHANGES TO THE WORDING OF THE ARTICLE

Add “supported by medical or other scientific evidence, pharmacological effect or experiences”
after WADA’s determination? ...: WADA’s determination, supported by scientific evidence...,

Article 7.4.1

GENERAL COMMENTS

More guidance on how and when the ADO should impose an optional Provisional suspension is needed for equality in these decisions. What is the impact on the rules of the signatories and also on the principle of the separation of powers?

Article 7.8

GENERAL COMMENTS

1. The terms “Independent Review Expert” are in italic, but are not defined in the Code and/or IS. Will there be a policy in case of conflicts of interest? It needs clarification, in particular on the following:
 - will it be a single individual, or a panel?
 - Who will appoint these experts, including if this will be an obligation for each ADO or for WADA?
 - What are the costs for an ADO as RMA?
 - Will there be a policy in case of conflicts of interest?

Article 10

GENERAL COMMENTS

Comment to Art. 10.3.2

To ensure flexibility and proportionality in sanctions, the sanctioning regime should be more flexible than currently (two years and a possible reduction with a minimum one-year suspension). One option would be to draw an analogy with substances of abuse and to use two months as the minimum suspension period.

Another option would be to increase this minimum sanction to three months, which is already a deterrent and has a significant impact on high-level athletes

Article 10.2

GENERAL COMMENTS

This long introduction is not necessary from a legal point of view as it is misleading and basically a repetition of the following provisions.

Furthermore, the modified rules should provide more clarity regarding the sanctioning system in general. But rather, the modified sanctioning system is more complex and seems to be difficult to apply in practice.

This might significantly complicate the case handling process. The system must remain understandable and applicable.

Article 10.2.1

GENERAL COMMENTS

The comment to article 10.2.1.3 needs further clarification or guidance on reliable evidence. Also, consider use the term “exceptional circumstances” in the comment to Article 10.2 instead of “narrowest of corridors” or refer to the comment in article 10.2.1.3.

Article 10.2.3

GENERAL COMMENTS

The flat two-month sanction is a positive development, as it simplifies the process for the ADO, the hearing panel and the athlete.

Article 10.2.4

GENERAL COMMENTS

Guidance of the handling of such a case seems necessary.

Article 10.7

Article 10.7.1.1

GENERAL COMMENTS

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.

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”

Remove the reference to substantial assistance being evaluated in terms of months or years.

Article 13.1.4

GENERAL COMMENTS

13.1.4 Timing of CAS Reasoned Awards

CAS Panels shall absent exceptional circumstances approved and documented to the parties by the CAS President issue reasoned awards within 60 days of the close of the hearing.

CAS-proceedings are expensive and therefore there should not be any unreasonable delay. For example, the 60-day deadline is common practice in Swiss criminal law.

Article 13.2

GENERAL COMMENTS

Introduction of a new provision 13.2.3.7 after Article 13.2.3.6:

NADA recommends that WADA should add a new provision indicating that NADOs shall not be added as Respondents to appeals by WADA or an IF when the NADO took the same substantive position as WADA is taking on appeal. Doing so creates procedural confusion on appeal placing parties arguing the same position on both sides of the case caption and is highly inefficient.

Additionally, given that WADA requires that first instance arbitral decisions be completely independent from the NADO, it is manifestly unfair for WADA to then hold the NADO accountable (through appellate costs) for the decision of this independent arbitration panel.

There was widespread agreement on this point amongst NADOs at the iNADO workshop earlier this year.

Implement a global or WADA fund / legal aid / insurance system to independently finance WADAs CAS appeals without any costs / or at least very few costs for Athletes as well as for ADOs using independent disciplinary tribunals at the first (national) instance.

Article 14.3

GENERAL COMMENTS

Comment to Article 14.3.3

The WADC (and ISDP) must consider the current GDPR compliance debate in Europe and the expecting decisions from the Court of Justice of the EU.

See for example:

- C-115/22 NADA and Others (especially the opinion of the Advocate General)
- C-474/24 NADA Austria and Others (oral hearing on 13 May 2025, judgment expected in the autumn of 2025)

EDPB's recommendations (especially paras. 33-36): https://www.edpb.europa.eu/our-work-tools/our-documents/recommendations/recommendations-12025-2027-wada-world-anti-doping-code_en

Article 18

GENERAL COMMENTS

WADC Art.18.4. here: Congruency:

"Natural person" should be replaced by the official term according to the ISE "Educator". WADC and ISE should be

Article 20

Article 20.5.2

GENERAL COMMENTS

NADOs are responsible for implementing compliant rules as far as they are competent to do so in the respective country's sport system.

However, NADOs are not responsible for adopting legislation (which is the responsibility of the competent Parliament) or government regulations (which is the responsibility of the competent Government).

To reflect this reality and avoid potential compliance consequences related to a prerogative that does not fall within the jurisdiction of NADOs, it is also proposed to delete the reference to adopting compliant rules.

Furthermore, NADA recommends removing the word "complete" from the proposed addition. WADA's addition requiring NADOs to have "complete authority" to implement their anti-doping rules raises questions as to the difference between authority and "complete" authority. For example, one could argue that complete authority means that no one can take away that authority. But, of course, such authority often originates in government laws the NADO has no authority to change.

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Appendix 1: Definitions

NADO Operational Independence

GENERAL COMMENTS

Operational independence is a fundamental principle in a well-functioning anti-doping system, but it is necessary to address "who" and "what" will be covered by the definition.

A few examples where NADA sees a need for additional clarity:

Re: potential staff working in various government entities, where the role of the government entity is not related to sport:

- DCOs normally working in the police or customs,
- BCOs normally working in state hospitals or military hospitals
- BCOs normally working in the health department in local governments
- TUE-Committee members working in state hospitals or military hospitals
- Staff members serving the home guard / military reserves
- Hearing and appeal panel members serving as judges

- Hearing and appeal panel members who work in the state prosecutors' office
- Clerks for the hearing and appeal panel working in ministry of foreign affairs/ministry of justice/interior
- Lawyers to prosecute cases working in ministry of justice/interior or in the state prosecutor's office.

Part of the challenge is, that "Government entity" is not defined, and could be interpreted very broad (any entity, including various agencies, under the control of or referring to any part of government be it federal, national, provincial, regional or local) or very narrow (ministerial departments led by a minister who is part of the cabinet at the national level only).

Re: Sport organizations.:

- DCOs who are board members of local clubs (but not involved in doping control in their own sports club or in the sport federation under which the sport club is organized).
- Sports physicians active in the TUE-Committee, who (as prerequisites of their status as sports physician, which is the preferred member according to the ISTUE) are also affiliated with a sports club/federation, but not assessing TUEs from members of the entity of which they are affiliated
- Administrators in the NADO who are part of the doping control process and at the same time play old boys' football, are in the board of the local sports club, are recreational level athletes?
- Athletes involved in the administrative review of whereabouts failures (but not in their own sport)
- DCOs who support MEOs such as the LOCOGs with doping controls during the Olympic Games? (mind you we cannot claim that they are unaffiliated with the NADOs insofar that there are expectations that the NADO might finance part of their travel costs.
- Test planners who are temporarily supporting the doping control planning during the execution of the doping control at the Olympic Games.
- NADO officials supporting the IF's doping commissions, medical committees or in the hearing panels of the IFs?
- Could NADO employees sit on the Foundation Board of ITA? Or in ITAs Expert Groups say for iDCO development or Pre-Games Expert Groups? What if it was that of IOC or IPC?
- Can a TUEC member of a NADO be member of an IF TUEC? Or a WADA TUEC?

Note that there is no distinction between national and international level (nor local level) in the current definition.

In addition to that we refer to our previous comment as follows:

In principle, NADA Germany considers this definition to be good for strengthening the NADOs and their tasks, but sees a need for further explanation and adaptation due to the different national (constitutional) jurisdictions with regard to the responsibilities of the NADOs. Therefore, the following will briefly outline the main problems and ideas for clarification in relation to the new definition.

• The definition (erroneously) assumes that testing and Results Management are originally the responsibility of the NADOs. However, this is generally not the case for all NADOs. In Germany, Sports Federations implement, and conduct sports specified rules and regulations based on the basis of their constitutional autonomy. According to Article 9 abstract one of the German Constitution (Grundgesetz), the national Sports Federations have the right to self-legislation and self-administration. They are allowed (but no obligated!) to delegate individual rights and duties to third parties. This is done on a contractual basis.

• Anti-doping responsibility also falls under their own remit. NADA can only act where there is an effective delegation in relation to anti-doping matters (e.g. via testing and results management agreements). Nevertheless, NADA acts in accordance with the requirements wherever it has been designated as responsible.

- Accordingly, there is a need for adaptation of the new definition, so that some NADOs can only comply with the requirements within the meaning of Article 20.5.1 - after delegation – to them.
- Either this systematic delegation component would have to be taken into account, or a general commentary should be added.
- It is therefore recommended that a commentary on Article 20.5.1 WADC27 be prepared that takes this systematic constitutional basis into account. Example:

“In cases where the requirements of Art. 20.5.1 could not be met by an NADO because of a breach of applicable (constitutional) rules or law this will not result in non-compliance for these NADOs regarding to ISCCS.”
- Moreover, the criteria for NADOs should generally apply to all ADOs (e.g. ITA or International Federations), so that Operational Independence and autonomy from state decision-makers are elementary components here as well.
- Furthermore, due to these constitutional premises, which fundamentally maintains anti-doping within the national Sports Federations, it should also be taken into account that some NADOs therefore systematically have no direct access to the affiliation/WADC compliance within the framework of professional leagues of these federations. In this respect, too, an individual contractual delegation to the NADO would have to be insured in order to fulfil the WADC requirements.
- It remains to be resolved how NADOS acting as state agencies and part of the ministry (Spain/AEA) are to be treated within the scope of the definition.

Other Comments / Suggestions

GENERAL COMMENTS

The Code and accompanying International Standards, which grow in number and size with each adaptation of the Code have created an over-regulated system of immense complexity. It goes without saying that if such a system is difficult to comprehend from professionals operating within the system, athletes have little hope of grasping the intricacies and nuances of that system that may ultimately dictate the course of their career and reputation.

The costs of complying with such an (over-regulated) system are also enormous, growing to the point of being unsustainable and creating further lack of harmonization among stakeholders who simply cannot afford to put in mechanisms to maintain compliance. This burdensome system also diverts resources from sample testing, analyses, and other services including education that could be provided to athletes.

Simply stated, it has the potential to reduce detection and deterrence in sport.