

World Anti-Doping Agency
Stock Exchange Tower
800 Place Victoria (Suite 1700)
Montréal, Quebec 4Z 1B7

Attn: Code Review Team

Broendby, Denmark, October 2012

Dear Sirs/Madams

Danish Submission for 2nd Consultation Phase of the World Anti-Doping Code 2015, v. 1.0.

On behalf of the NOC and Sports Confederation of Denmark, Team Denmark, the Athletes Commission, the Danish Elite Athletes Association, the Ministry of Culture and Anti Doping Denmark (hereafter *the parties*), we are pleased to submit this contribution in this 2nd phase of the consultation process of the World Anti-Doping Code 2015.

Overall we are largely supportive of the proposed changes in the draft Code 2015 v.1.0. Especially, we strongly welcome the inclusion of references to proportionality and human rights in several articles.

However, for some of the changes which will have significant impact on our testing program, we would have liked to see the reasoned and documented analysis behind in order for us to understand the intention with the changes and in order to be able to communicate them to the Danish sports community. This relates e.g. to the proposal to eliminate the B-sample and the requirement for laboratories to test for all prohibited substances in all samples.

And finally, there are some crucial issues which we pointed to in the first revision phase that have not been changed in the first draft and which we therefore raise here again. This relates to mutual recognition of TUEs and to increased flexibility of sanctions.

We direct our comments in this submission on issues of over-arching concern that we believe should be changed in the next phase of the Code revision process.

We are committed to participating in the remaining consultation phases and hope for a constructive and transparent process.

Yours sincerely,



Lone Hansen
Anti Doping Denmark

2.4 Filing Failures and Missed Tests

The parties approve of reducing the time period in which three whereabouts failures of missed tests count for a possible anti-doping rule violation. It will allow ADOs to focus on real cheaters, and not on those athletes who are merely disorganised. We consider 12 months to be a fair and proportionate period and sufficient for us to discover those athletes who deliberately attempt to hide from doping control out-of-competition. As the comment to article 2.4 still states, missed tests or whereabouts failures can also be pursued as a violation of 2.3 or 2.5 avoiding doping control if evidence supports such assertions.

The proposed change is strongly supported.

2.10 Prohibited Association

Introducing a prohibition for athletes to associate with support personnel who *are* serving a period of ineligibility as the first part of the article reads is supported by the parties in Denmark although we believe it will be difficult to implement due to the lack of time frame for the last part of the article which reads “**or** who has been found in a criminal or disciplinary proceeding to have been involved with doping....” If a support person has been guilty of a violation at one point *in the past*, when will the athlete be allowed to associate with him again?

The lack of time specification for this last part of the article has the side effect that athlete support personnel may potentially be barred from working with athletes ever again - even after they have served their suspension period. If this is the intension the parties consider it to be disproportionate.

The parties do not support the proposed change in the current wording and suggest that the last part of the sentence be removed.

4.3 Criteria for Including Substances and Methods on the Prohibited List

The parties strongly welcome the change proposed regarding the criteria for including substances on the Prohibited List. This change is consistent with Danish proposal in the first round of the revision process to define doping and determine the List more clearly around the concept of enhancement of sport performance through cheating. The parties believe this is a significant improvement which will allow us to focus our resources on the deliberate cheaters. Although WADA's List Committee should maintain the ultimate authority to determine the composition of the List, the process should be open and transparent. Arguments should be provided to stakeholders for the decisions taken by the List Committee.

The proposed change is strongly supported and the parties would like to see it upheld in version 2.0.

4.4.1 TUEs (Mutual Recognition)

It remains wrong that the default position is that a TUE issued at the “national level” becomes invalid the moment an athlete becomes “international level” or qualifies for an “international event”. It is contrary to the principle of mutual recognition of Article 15.4. TUEs issued in accordance with the Code and TUE standard should remain valid when the athlete advances to international level or qualifies to participate in an international competition.

The parties urge WADA to remove the wordings that allow international federations to decide which TUEs issued by national anti-doping organizations they will recognize. All TUEs issued by Code

Compliant NADOs should be accepted by international federations per default but remain subject to the WADA review procedure set out in 4.4.3.

5.1.3 High Priority Athlete Pools

The change to emphasize proportionality with respect to establish “High Priority Athlete Pools” are welcomed by the parties so that the whereabouts requirements only apply to athletes who are selected on the basis of a risk evaluation and will actually be tested on the whereabouts they provide. We support that the Code and especially the IST allow ADOs to establish special requirements for team sports so that the implementation of whereabouts requirements also fulfill the requirement of proportionality.

The proposed change is supported.

6.4 Standards for Sample Analysis and Reporting

The requirement to test for all prohibited substances in all samples is contrary to the intelligent testing program we run based on risk assessment, competition level and other available intelligence on the athlete and/or the sport. Furthermore, the proposal will lead to increased costs for anti-doping organisations with little or no benefit. EPO and/or hgH analysis are simply not relevant at lower level in many sports.(e.g. weightlifting)

The parties strongly object to the proposal. We propose instead that WADA determine with individual IFs how IF testing programs could/should be constructed to be optimal and that NADOs at the national level should be authorized to determine relevant analysis in each sport according to risk factors and athlete competition level etc.

7 Elimination of B-sample

The parties believe it is necessary to have more available information in order to decide on the proposal to remove the B-sample and in order to communicate such a significant change to the sport community.

The parties do not support the change on the basis of the available information and requests that WADA provide a full explanation and rationale for this proposal along with the underlying analysis for the argument that elimination of the B-sample will reduce costs.

8.5 Initial hearing before CAS

The proposal to allow for an initial hearing before CAS in cases involving athletes in a High Priority Athlete Pool is welcomed by the Danish parties. This would allow athletes and anti-doping organizations to save time and resources if all parties including the athlete agree.

The proposed change is supported.

10.4.3 Substances of Abuse

The proposal to replace parts of a period of ineligibility with rehabilitation is a step in the right direction for more flexibility in sanctions which the Danish parties have requested in the first round of the revision process. However, while the purpose behind this proposal is also a noble one, there will be many challenges related to its implementation. Also the parties emphasize that substances which are taken in a social setting and which have no performance enhancing effect should rather be removed from the list or more flexibility should be allowed in the length of sanctions (e.g. cocaine). If the proposal should remain in future revisions it must be specified what constitutes rehabilitation and how much of an athlete’s sanction could possibly be reduced by undergoing rehabilitation?

The parties support the proposal.

10.5.3.2 Substantial Assistance

The parties support the proposal to give WADA the authority to determine an acceptable suspension of the standard sanction or even amnesty in cases where an athlete or other person has provided substantial assistance to an anti-doping organization.

The proposed change is supported.

10.6 Circumstances in which a Four-Year Period of Ineligibility will be Applied

The parties approve of specifying the circumstances which should be treated as aggravated, but we disagree that the specified circumstances *must* automatically lead to a four year ban. The proposed changes will practically standardize the four-year ban for some of the most common doping cases (steroids, EPO), thus in effect raising the "standard period of ineligibility" from two to four years. E.g. lower level/recreational athletes who test positive for two steroids should not automatically receive a four year ban. These cases are very common in Denmark (many in weightlifting and powerlifting and other sports at low or recreational level) and the parties do not believe it is proportional to exclude these athletes from sport for 4 years.

The parties suggest that some flexibility be introduced to the article so that each case can be evaluated individually.

10.10.2 Return for Training

The parties note the change to allow athletes to return for training during the last part of the period of ineligibility. This change is supported. Related to this issue is the change proposed to the definition of "Consequences of Anti-Doping Rule Violations" where "activity" has been added to indicate that an athlete is barred from all activity including training during a provisional suspension.

Both these proposed changes are supported.

10.15 Limitation on Participation in the Olympic Games

The parties do not support the introduction of an Olympic Ban as it creates disharmony between athletes participating in Olympic and non-Olympic sports which the Code is intended to prevent.

It is not the view of the parties that Olympic Games are special events in a global perspective which justifies an extra ban compared to World Championships etc.

Furthermore, the parties believe that a more frequent use of 4 year sanctions (ref 10.6) will sufficiently serve the purpose of preventing Olympic athletes to return to compete in upcoming Olympic Games.

The parties strongly object to the Olympic Ban and suggest that it is removed from the next version of the 2015 WADC.

11.2 Consequences to Teams

Although the parties believe it is positive to have minimum sanctions for teams defined, they do not agree to the proposed wording as it potentially sanctions many innocent athletes/clubs/officials which is not believed to be proportionate. The parties suggest modifications/specification of the definitions of the terms "team" and "event" as these are crucial to the implications the article may have, and as there are differences between the Code definitions and the IOC and IF definitions.

Furthermore, the parties note the significant change from “more than two” to “two or more” team members in a team sport which will invoke this article. WADA is urged to provide the reasoning for this change.

The change cannot be supported in the proposed wording. The parties suggest that definitions of team and event are specified for the purpose of this article.

14.7 Data Privacy

The parties welcome the proposal to emphasize that national data protection laws and regulations must be adhered to in the processing and sharing of data related to doping control.

The change is supported.

17 Statute of Limitations

The proposal to extend the period for commencement of anti-doping rule violation proceedings to 14 years in cases of Trafficking, Administration, Complicity or Aggravating circumstances.

This is supported as it will allow for enhanced opportunities to sanction the most serious forms of doping.

The change is supported.

Definition of Athlete

The addition to the definition of ‘national level athlete’ which allows NADOs to determine which group of athlete should be considered ‘national level’ is strongly supported.

The change is supported.