

By e-mail to code@wada-ama.org

World Anti-Doping Agency
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Attn: Code Review Team

Broendby, Denmark March 13, 2012

Dear Sirs/Madams

Danish Submission for 1st Consultation Phase of the World Anti-Doping Code

On behalf of the Ministry of Culture, the NOC and Sports Confederation of Denmark and Anti Doping Denmark, we are pleased to submit this contribution in this 1st phase of the consultation process.

We wish to express our appreciation to WADA for the opportunity to bring forth our views on the existing Code on the basis of our experience with the application of it in our activities against the use of doping in Denmark.

We are largely supportive of the current Code although we believe there are still areas that could be revised to make the Code a more effective document.

We have decided to focus our comments in this submission on issues of over-arching concern that we believe should be taken into account when revising the Code.

We hope our contribution will provide the Code Project Team with valuable input.

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

1. Definition of “Athlete” and scope of WADC

The Code is primarily designed for combating doping among international and national elite-level athletes. In general we believe the Code is a helpful document in this respect. However, at a national level in Denmark, we are also committed to combat doping among athletes who participate in sport at a recreational level only.

Thus, we strongly support the redrafted definition of “Athlete” in the current 2009 version of the Code, which allows ADOs to establish separate rules for non-elite athletes who do not participate in competitions. In line with this definition we have implemented anti-doping rules for recreational level athletes which is a much less complex document and which allows for the flexibility needed for this group of athletes.

We find this differentiation of athletes important and suggest that it be upheld and possibly described in the introduction to the Code.

2. Prioritization of resources

It is of utmost importance that anti-doping organizations can maintain and preserve credibility for anti-doping activities among the sports community and the public. In order for this to be possible anti-doping rules must be perceived as fair, appropriate and proportionate.

The Code has an important function as a uniform and world-wide instrument for the establishment of standardized and harmonised procedures and sanctions.

At the same time we find there is a need to achieve a better balance between the mandatory requirements of the Code and a more prioritized and cost-effective implementation of it.

There is a limit to the resources available for the fight against doping and there is no indication that there will be substantial increases in the foreseeable future as demands on current resources will continue to expand.

We therefore believe that the Code needs to allow for priorities in the fight against doping so that:

- (a) anti-doping organizations can effectively direct their limited resources towards the serious forms of doping
- (b) there is more flexibility for anti-doping organizations to apply their resources according to their circumstances
- (c) anti-doping organizations with limited resources can make useful contributions in the fight against doping

(For example, should a mandatory “RTP” be of highest priority for all ADO’s or could it be decided on a sport-by-sport basis according to risk analysis and the specific characteristics of the sport? Is the full prosecution of cases (conceivably ending up at CAS) for substances which have not in any way altered an athlete’s performance necessary?)

3. Definition of doping and criteria for including substances on the Prohibited List

In order to determine the best methods of fighting doping it is important that we have a clear definition of the problem we are fighting. The current definition of doping is very complex and somewhat difficult to communicate as it defines the problem of doping through the rules set up to regulate the problem. This in some instances hinders an open debate about what doping is and the sporting community finds that there is a lack of clarity about what the Code is trying to achieve.

In other words, there is no settled and consistent philosophy underlying the various anti-doping violations that make up the definition of doping in the Code which may vary from year to year as substances and methods are included or excluded from the Prohibited List.

In addition, the definition of doping largely depends on “WADA’s determination of the substance or method that violates the spirit of sport” which is a rather vague criterion to be used to determine the substances and methods to be included on the List and difficult to explain to the sporting community and to the public in general. We have experienced some inappropriate consequences relating to this criterion and would welcome an international discussion of the importance and relevance of it in the definition of doping and in particular in relation to the determination of the Prohibited List.

In general we would like to see that the definition of doping and the determination of the List be more clearly defined around the concept of enhancement of sport performance through cheating. We maintain our position from previous submissions that the performance enhancement criteria must always be fulfilled for a substance or method to be included on the Prohibited List in combination with one of the two other criteria. (‘Health risk’ (Art. 4.3.1.2) and ‘Spirit of sport criteria’ (Art. 4.3.1.3).

We find that it is important to consider that a doping substance or method that does not enhance performance is only placed on the Prohibited List after a separate, transparent and inclusive (of all WADA stakeholders) review process. A substance that only fulfils the ‘Health risk’ and the ‘Spirit of sport’ criterions should be included as a substance prohibited only in certain sports where there is a consensus position to have a prohibition against the relevant substance.

We would like for the Code to allow for simplified results management in cases where an athlete returns a low level of a substance prohibited in-competition only e.g. methylhexaneamine or morphine that could have resulted from out-of-competition use. The full force of the Code need not be applied if the level is so small such that it could not reasonably have been expected to have impacted on performance that day. In other words it should be considered that higher reporting thresholds (for that range of substances) could be set with respect to the need to “prosecute” an athlete so that sub-threshold values could be dealt with administratively, e.g. by issuing a warning or reprimand.

4. Recognition for differences in target groups and circumstances

The Code currently applies to; International Federations, Major Games Organisers and NADO’s and while it distinguishes between international-level and national-level athletes the different circumstances of each are not adequately reflected within the Code and nor is there a satisfactory transition process from one to the other.

The Code should also recognise that:

- (a) national-level athletes in many sports and countries are part-time amateurs and the current guidance to the definition of national level athlete is impractical;
- (b) NADOs face greater challenges in tracking, educating and testing national-level athletes than applies to international-level athletes; and
- (c) national-level athletes in many countries and sports are less likely to be engaging in sophisticated doping techniques and conversely are more likely to inadvertently violate rules.

Many NADOs deal with a vast number and broad range of athletes. IFs, on the other hand, are more likely to be dealing with a limited group of elite athletes who are generally familiar with the anti-doping rules but who may be more prone to attempting doping in a sophisticated manner.

The Code should better recognise the different challenges faced by, in particular, NADOs and IFs.

5. Data Protection – National Legislation vs. WADC

It is important that that Code includes a standard of personal data protection that respects legislation in regions and countries that perceive high standards on data protection. We find it important that this topic be addressed in the Code review process.

6. Sanctions for non-specified substances

With regards to non-specified substances – we would welcome an opportunity for the sanction to be less than half of the otherwise appropriate sanction due to principles of proportionality. This could for example be relevant in cases of inadvertent doping where the degree of fault is very minimal and proportionality should indicate a sanction of less than one year if the athlete can establish that the intent has been to avoid doping e.g. in cases where the athlete has examined the content of the product but the product nevertheless contains illegal substances due to fraud by the producer.

Another example could be non-specified social drugs (e.g. cocaine and amphetamine) which would normally only be used in a non-sporting social context. In some of these cases a sanction of less than one year suspension might be considered fair and proportionate.

7. Criteria for establishment of independent tribunals

The current Code opens for a large degree of variation in approaches and systems for results management procedures. (See comment to article 7). We appreciate that this was necessary when drafting a Code which were to unify many different ADOs' regulations. However, the Code will have been in force for ten years when the forthcoming change of the Code will come into effect and in our opinion this could be the right time for WADA to introduce some additional basic demands for the results management structure of the various ADOs to ensure athletes of different sports and nationalities a more uniform results management process.

It is essential to secure the athletes' right to a fair hearing and to secure the legal protection of any person prosecuted of a possible rule violation. Requirements for establishment of independent tribunals and formalized Judicial Committees/Hearing Bodies should be identified

to strengthen the athlete's legal protection and to ensure more independence from the political interests of sports organizations.

Competence requirements for members of tribunals should be identified covering judicial, medical and sport competence as a minimum.

8. Expedited case management

Anti-doping regimes must ultimately retain the support of the sporting community. In order to do that they must be seen to be fair, reasonable and proportionate. A situation where athletes are going through case processes in a manner which does not appear to be fair and reasonable may lead to a situation where the anti-doping work will lose credibility and support. The Danish sports organisations and Anti Doping Denmark believe that there have been unfortunate cases, where results management procedures have been delayed due to circumstances not caused by the athlete. Although the WADC does in itself specify time frames that must be adhered to by results management authorities, we have seen that these are not implemented by all ADOs. WADA should seek a solution to this.

Additionally we would welcome if WADA and CAS in corporation would attempt to find a more effective procedure for case management to avoid long and costly case procedures without jeopardizing the athlete's legal rights.

9. Quality Control on Private Testing Authorities

We are concerned about the quality control with private Testing Authorities in the field of sample collection and would like to see that WADA specifies requirements to be fulfilled by these private businesses in order to document that their DCOs are trained according to the IST. We have had several complaints by athletes who have been tested by these private organisations and where IST procedures have not been followed.