

Five arguments why the International Biathlon Union supports the World Anti-Doping Code 2007 Amendments

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1. Consistency in the Definitions of Anti-Doping Rules Violations

When applying the IBU Anti-Doping and IBU Disciplinary Rules, which have been adapted in order to be in full harmony with the WADA Code 2003, when IBU joined the WADA system, the IBU had to delimitate art 2.2 and 2.8 in a couple of cases. It needed the advice of lawyers in order to be sure that the former art 2.2 should be understood to cover only athletes and not medical doctors and other persons actively involved in anti-doping rule violations. The more precise formulation of art. 2.2 in comparison to the Code 2003 helps International federations (IFs) in now finding an easy and safe way of delimitating the two provisions.

The rule of art 2.1.2 WADA Code 2007 offers a tool easily to handle to IFs for dealing with one of the most difficult elements concerning the establishment of an anti-doping-rule violation which is to find sufficient evidence thereby standing on a safe ground. Such clear guideline did not exist in the 2003 Code.

The former version of art 2.4 WADA Code 2003 left IFs with a broad margin of appreciation concerning the prerequisites on when to consider filing failures and missed tests as sufficient in order to have an anti-doping rule violation established. The eighteen-months rule laid down by the new WADA Code together with the International Standard for Testing offers a measure which will be as easy to handle as it seems to be just regarding a fair behaviour of athletes belonging to the IFs Registered testing Pools.

2. Mutual Assistance of Different Bodies in the Proof of Doping

The WADA Code 2003 did not address the question whether an IF dealing with the result management in a case of an adverse analytical finding could use facts established by a decision of a court or professional disciplinary tribunal outside the pending procedure. Art 3.2.3 WADA Code 2007 assigns to facts established in such a manner the quality of irrefutable evidence against an athlete or other person to whom the decision pertained of those facts unless the athlete or other person establishes that the decision violated principles of natural justice.

3. A More Homogenic System in Therapeutic Use Exemption Matters

The new art. 4.4 WADA Code 2007 establishes a just distribution of burdens concerning therapeutic use exemption between the various stake-holders and gives more flexibility to IFs how to set up a system in these matters as a competence shared with their members, the national anti-doping agencies and the IF. Depending on the size of an IF and sport, the one might opt for a more federal approach, the other for a more centralized system. The IBU, as a comparatively small federation will continue a centralized approach offering the best possible tool in order to handle about 50 applications world-wide per year.

4. Perfectionizing of the Rules of Law and Natural Justice in Results Management, Hearings and Sanctions

There is no matter of doubt that the articles 7, 8 and 10 have raised the priority interest of the IBU when evaluating the differences between the 2003 and 2007 Codes. The IBU is well aware of the fact that the new versions of these articles will cause a big deal of additional work for its bodies dealing with results management and sanctioning. The implementation and application of these articles will require detailed legal analysis and background in each individual case, but at the end the rule of law side to side with natural justice will be strengthened. The comparably simple system of results management and sanctioning according to the 2003 Code left doubts with the one or other member of a competent IBU body whether really justice has been done to an athlete or other person having been found of having committed an anti-doping-rule violation. There was little room for taking into consideration the specific circumstances of each case with regard to substance and fault involved. On the other hand athletes tried to escape to sanctions and justice by retiring from sport. A uniform obligation to hold a hearing led to administrative and financial burdens on all sides involved, even in cases where the athletes themselves would have preferred not to have a hearing organized, having been aware of their wrong-doing and prepared to accept the respective sanctions. Art 8.3 2007 Code, thus, is very welcome by the IBU.

The new sanction system helps the IBU enormously in setting-up justice to athletes and other persons involved in anti-doping-rule violations depending on the type of prohibited substance used, its effects on the sport performance of the athlete concerned and the fault elements in the person having committed the anti-doping-rule violation. The system proposed by the new WADA Code strengthens the autonomy of a federation's sanctionary policy based on the specific endangerment of the respective sport or sports by certain prohibited substances and prohibited methods in the framework of general guidelines of WADA delimitating the borders of a federation's autonomy. Certainly advice and education by members to the CAS and WADA results management as well as legal might help to a world-wide consented approach oriented at effectivity in combating doping, but being just at the same time.

5. Strengthening of Education and Research against Actual and Future Means and Methods of Doping

The IBU welcomes the expansion and potential for increased efficiency of education programs and research projects laid down by articles 18 and 19 of the 2007 Code in comparison to the 2003 Code. These articles open additional possibilities for a cooperation between WADA and the IBU, but also between other stake-holders together with WADA in an efficient world-wide fight against doping, thereby supporting preventive measures instead of sanctionary measures. The IBU fully supports the view that it is better to prevent a war than to win a war.