

Postscript: 21 December 2020

On 17 December 2020, the Court of Arbitration for Sport (CAS) published its ruling to declare the Russian Anti-Doping Agency (RUSADA) non-compliant with the World Anti-Doping Code (Code) for a period of two years and to impose significant consequences; after which, the World Anti-Doping Agency (WADA) issued a [media release](#) the same day.

As a result of the CAS ruling, the following Qs and As, dated 2 February 2020, do not reflect the ruling; and, will be revised and re-published by WADA in the coming weeks.

RUSADA NON-COMPLIANCE

QUESTIONS AND ANSWERS

On [9 December 2019](#), the World Anti-Doping Agency's (WADA's) [Executive Committee \(ExCo\)](#) considered the [recommendation](#) made by the independent Compliance Review Committee (CRC) that the Russian Anti-Doping Agency (RUSADA) be declared non-compliant with the World Anti-Doping Code (Code).

Meeting in Lausanne, Switzerland, the 12-member ExCo unanimously adopted the CRC's recommendation, which includes a series of strong proposed consequences and conditions of reinstatement in accordance with the [International Standard for Code Compliance by Signatories \(ISCCS\)](#).

The recommendation was based on the facts uncovered in an investigation conducted by WADA's Intelligence and Investigations Department (I&I), together with independent forensic experts from Lausanne University's Institute of Forensic Science, which facts were summarised in the [report of WADA I&I](#) that was the basis of the CRC's recommendation.

1. What brought about the WADA ExCo decision of 9 December 2019?

RUSADA was declared non-compliant in November 2015 on the recommendation of a WADA commission chaired by Mr. Richard Pound, based on evidence that RUSADA was complicit in a scheme to cover up doping by Russian athletes. In 2016, Professor Richard McLaren investigated and set out details of the scheme, involving doping of Russian athletes and the practices of 'disappearing positives' and sample swapping at the Moscow anti-doping laboratory to cover up that doping. In 2017, a whistle-blower provided WADA I&I with a copy of the Moscow laboratory's Laboratory Information Management System (LIMS) database for analysis of samples between January 2012 and August 2015, which contained a hidden section containing the 'disappearing positives' described in Professor McLaren's reports, evidencing potential doping by hundreds of Russian athletes. However the Russian authorities disputed the authenticity of the copy of the LIMS database provided by the whistle-blower to WADA (the **2015 LIMS copy**), but refused to

provide access to the original database on the grounds that it was potential evidence in a criminal investigation by the Russian Investigative Committee.

To break the deadlock, the WADA ExCo restored RUSADA to the list of Code-compliant Signatories in [September 2018](#), on condition that RUSADA and the Russian Sports Ministry procure that WADA be given full access to the Moscow laboratory to take authentic copies of its LIMS database and the raw data underlying the results reported in that database, as well as any samples referred to in that database that were still in storage at the Moscow laboratory. In January 2019, WADA I&I was given access to the laboratory and took forensic copies of the LIMS database (the **2019 LIMS copy**) and the underlying raw data (about 23 terabytes of data in total). It obtained the samples (2,262 in total) in April 2019.

The 2019 LIMS copy contains the same hidden section containing 'disappearing positives' as the 2015 LIMS copy, and therefore confirms the existence of the conspiracy to protect doped Russian athletes. However a detailed forensic analysis revealed some targeted manipulation of the data. In particular, some of the disappearing positives seen in the 2015 LIMS copy were missing from the 2019 LIMS copy, and the data underlying those positives were also missing. This manipulation led to WADA opening a fast-track compliance procedure on [17 September 2019](#), in accordance with ISCCS Article 9.5. The Russian authorities were given the opportunity to provide responses to a list of detailed and technical questions raised by WADA I&I and the independent forensic experts, but those responses did not change their conclusion that targeted manipulation had occurred. In fact, WADA I&I and the forensic experts uncovered fabricated evidence that had been planted in the 2019 LIMS copy at some point after RUSADA's reinstatement (most likely in November 2018, just before the copy was made), that was designed to implicate the former heads of the Moscow laboratory in a private scheme to distort money from athletes using the disappearing positives.

On [22 November 2019](#), the CRC recommended to the ExCo that a formal notice be issued to RUSADA: (1) asserting that RUSADA had failed to comply with the requirement to procure for WADA an authentic copy of the LIMS database and underlying raw data; (2) asserting that that non-compliance was aggravated by the deliberate tampering with that evidence and by the attempts to cover up that tampering, including the planting of fabricated evidence; (3) proposing significant consequences, in line with the principles set out in ISCCS Article 11; and (4) also proposing a set of reinstatement conditions, in line with ISCCS Article 12. On [9 December 2019](#), the ExCo unanimously approved the CRC's recommendation.

2. What does this tampering with data mean for the 298 target cases that WADA announced in July 2019?

One of WADA's main aims in seeking the data and samples from the Moscow laboratory was to obtain sufficient evidence either to prosecute athletes with 'disappearing positives' or (in appropriate cases) to clear them of suspicion.

In [July 2019](#), WADA I&I announced that it had identified a target pool of 298 athletes with the most suspicious data.

WADA I&I has determined that 153 of the 298 target cases are unaffected by the data manipulation. Having analyzed only part of that underlying data so far, WADA I&I has been able to refer more than 40 potential doping cases to date to the International Federations with relevant results management authority, and at least 15 of those cases are now in the disciplinary process.

In addition, WADA's targeted re-analysis of the Moscow samples (94 to date) has produced 14 adverse analytical findings, the disciplinary process of which is being managed by RUSADA under WADA's monitoring.

Moving forward, WADA I&I will review further data and have further samples re-analyzed, and more cases are expected to be identified in both categories (data and samples). WADA has a right to appeal to Court of Arbitration for Sport (CAS) against any decision by an International Federation (IF) not to take a particular case or cases forward.

The other 145 target cases are currently impacted by deleted or manipulated data. Nevertheless, there may still be scope to pursue these cases. Russia could still provide the missing data, or else the forensic experts may be able to retrieve that data, or samples from the athletes in question that are within the 2,262 recovered samples may test positive on re-analysis, or there is enough circumstantial evidence to bring cases forward.

In addition, one of the proposed reinstatement conditions is that RUSADA (with the support of the Russian authorities where necessary) must:

- conduct investigations into the 145 impacted cases (and any other cases added by WADA I&I to that list), including doing everything possible to locate the complete and authentic data relating to those cases, so as to rectify in full the tampering that has impacted those cases; and
- provide any other support (including locating and providing any further data or information, and/or carrying out interviews or other investigative measures) as required by WADA or any other Anti-Doping Organization to assist in determining whether Russian athletes whose samples are listed in the 2015 LIMS database have a case to answer for breach of the anti-doping rules.

For all 298 suspicious athletes, including each of the 145 athletes, WADA I&I will prepare intelligence packages with all the names and available evidence. These packages will be provided to the respective International Federations for results management if the evidence is strong enough, or else for further investigation and target testing (where the athlete is still competing). In addition, as per the 9 December 2019 decision of the WADA ExCo, WADA wants to block these 145 athletes from participating in any of the Covered Events as authorized neutral athletes (as to which, see below).

3. What are the proposed consequences for this data tampering?

Reference should be made to the CRC [recommendation](#) for full detail. In summary, for a period of four years, starting from the date the decision to impose the consequences becomes final (the **Four-Year Period**):

- Russian Government officials/representatives may not be appointed to sit and may not sit as members of the boards or committees or any other bodies of any Code Signatory (or its members) or association of Signatories.
- Russian Government officials/representatives may not participate in or attend any of the following events held in the Four-Year Period (together, the **Covered Events**):
 - (a) the Youth Olympic Games (YOG) (summer and winter);
 - (b) the Olympic Games and Paralympic Games (summer and winter);
 - (c) any other event organized by a Major Event Organization; and
 - (d) World Championships organized or sanctioned by any Signatory.
- Russia may not host in the Four-Year Period, or bid for or be granted in the Four-Year Period the right to host (whether during or after the Four-Year Period), any editions of any of the Covered Events. In addition, Russia may not bid for the right to host the 2032 Olympic and Paralympic Games, irrespective of whether the bidding takes place during or after the Four-Year Period.
- Where the right to host a Covered Event in the Four-Year Period has already been awarded to Russia, the Signatory must withdraw that right and re-assign the event to another country, unless it is legally or practically impossible to do so.
- Russia's flag may not be flown at any Covered Event staged in the Four-Year Period.
- Neither the President, the Secretary-General, the CEO, nor any member of the Executive Board/Governing Board of either the Russian Olympic Committee (ROC) or the Russian Paralympic Committee (RPC) may participate in or attend any Covered Event staged in the Four-Year Period.
- Russian athletes and their support personnel may only participate in Covered Events staged in the Four-Year Period:
 - on a neutral basis, i.e. not as representatives of Russia; and
 - if they are able to demonstrate that they are not implicated in any way by the non-compliance, meaning (at least) that they are not mentioned in incriminating circumstances in the McLaren reports, there are no positive findings reported for them in the LIMS database, no data relating to their samples have been manipulated, and they have been subject to adequate in-competition and out-of-competition testing prior to the Covered Event in question, in accordance with strict conditions to be defined by WADA (or the Court of Arbitration for Sport (**CAS**), if it sees fit), pursuant to the mechanism foreseen in ISCCS Article 11.2.6.



- Given the aggravating factors that are present in this case, RUSADA must pay all WADA's costs on this file incurred since January 2019 and, in addition, a fine to WADA of 10% of its 2019 income or USD 100,000 (whichever is lower). This is the maximum fine available under the rules of the ISCCS, and all monies must be paid before the end of the Four-Year Period.

4. What are the next steps?

In accordance with the ISCCS, on 9 December 2019, formal notice was sent to RUSADA, asserting non-compliance and proposing the consequences and conditions of reinstatement recommended by the CRC and endorsed by the ExCo. RUSADA had 21 days to respond to the notice.

On 27 December, WADA received official notice from RUSADA disputing WADA's assertion of non-compliance. Accordingly, in accordance with ISCCS Article 10.4.1, on [9 January 2020](#) WADA filed a formal notice of dispute with the CAS. The CAS Ordinary Arbitration Division will now hold a hearing to determine whether RUSADA is non-compliant as alleged by WADA, and (if so) whether to impose the consequences and reinstatement conditions proposed by WADA and/or other consequences and/or reinstatement conditions.

Within 10 days of this notice being filed with the CAS, affected third parties had the opportunity to apply to intervene in the proceedings. This would include, in particular:

- a. the International Olympic Committee and the International Paralympic Committee, and the ROC and the RPC, since the proposed consequences would have an effect in relation to the Olympic Games and the Paralympic Games staged in the Four-Year Period; and
- b. International Federations, since the proposed consequences would have an effect on participation in their World Championships and on the right of Russia to host World Championships in the Four-Year Period.

5. Will the final decision of the CAS be binding on all Signatories?

Yes. Code Article 23.5.9 provides that CAS's decision resolving the dispute is applicable worldwide, and must be recognized, respected and given full effect by all Signatories in accordance with their authority and within their respective spheres of responsibility. Even if there would be an appeal to the Swiss Federal Tribunal, the decision would be enforceable immediately, unless the Swiss Federal Tribunal orders otherwise.

So, for example, just as a doping ban on an individual athlete that is issued under the authority of an International Federation or a National Anti-Doping Organization (NADO) must be recognized and respected by all organizers of events that are staged during the athlete's ban, so too if CAS confirms the consequences proposed here, the organizers of the Covered Events will have to recognize and implement those consequences in respect of their Covered Events.

6. What happens if a Signatory does not respect and give effect to the consequences imposed?

Annex A1(n) of the ISCCS specifies that compliance with Code Article 23.5.9 (i.e. recognition and implementation of decisions as to non-compliance by other Signatories) is a "Critical" requirement in the fight against doping in sport.

Accordingly, WADA will monitor compliance by Signatories with this requirement as part of its normal compliance program. The consequences for non-compliance with a Critical requirement are outlined in Annex B to the ISCCS.

7. When would the consequences be implemented?

Paragraph 54 of the CRC recommendation stipulates that the proposed consequences are to come into effect on the date on which the decision that RUSADA is non-compliant becomes final. They would therefore come into effect on the date that the CAS issues its final award.

8. What constitutes a "World Championship" for these purposes?

As noted above, the Covered Events include "any World Championships organized or sanctioned by any Signatory" in the Four-Year Period. For these purposes, a "World Championship" is any event or series of events that determines the World Champion for a particular sport or discipline in a sport.

If a "World Cup" determines the World Champion (as in, for example, soccer), it is a Covered Event. If it does not (as in, for example, biathlon), then it is not.

If the World Champion is determined by a series of events – e.g. the International Triathlon Union's World Triathlon Series – then all of those events are Covered Events.

If the event determines a regional champion, rather than the World Champion (e.g. the UEFA European Championships in soccer), it is not a Covered Event.

Qualifying events for a World Championship do not themselves determine the World Champion, and so are not covered.

9. What constitutes an "event organized by a Major Event Organization" for these purposes?

Covered Events also include "any event organized by a Major Event Organization" in the Four-Year Period.

The Code defines Major Event Organizations as "the continental associations of National Olympic Committees and other international multi-sport organizations that function as the ruling body for any continental, regional or other International Event".

Therefore, "events organized by a Major Event Organization" are multi-sport events organized by bodies such as the Olympic Council of Asia and the European Olympic Committees.

Continental or regional single-sports events are not covered.

10. Are age-grade events covered?

The only age-grade event falling within the definition of Covered Events is the Youth Olympic Games.

Otherwise, it is only Covered Events (men's and women's) that are included, not those for limited age-categories (such as juniors and masters World Championships).

11. Why didn't WADA propose a blanket ban on all Russian athletes from participating in Covered Events?

The ISCCS says that the consequences should reflect the seriousness of the non-compliance in issue, including its impact on clean sport, and above all should be sufficient to maintain the confidence of all WADA's stakeholders, and of the public at large, in the commitment of WADA and its partners from the public authorities and from the sport movement to do what is necessary to defend the integrity of sport.

On the other hand, one of WADA's main objectives is to protect clean athletes, and ISCCS Article 11.2.6 says that the consequences should not go further than is necessary to achieve WADA's objectives. It says that in particular, where a consequence imposed is exclusion of athletes from participation in one or more events, consideration should be given to whether it is feasible to implement a mechanism that enables the non-compliant Signatory's athletes to demonstrate that they are not affected in any way by the Signatory's non-compliance, and (if so) to participate in the events in a neutral capacity (i.e., not as representatives of any country).

That balance is never easy to strike, and WADA respects the views of those who believe a blanket ban should have been imposed on Russian athletes for the Tokyo Olympics and Paralympics, without any possibility for any of them to prove that they are untainted and so should be allowed to compete in a neutral capacity. However, that view seems to be driven by concerns that Russia has never been properly punished for the original doping scheme, whereas the ISCCS only applies to actions that took place after it came into force on 1 April 2018. The non-compliance that occurred after that date – the tampering with data and planting of false evidence referred to above – is very serious, but as far as WADA is aware no athletes were involved in it.

As a result, the unanimous view of the CRC, unanimously approved by the WADA ExCo, was that the consequences should send a clear message to those responsible that they have forfeited their right – and the right of Russia as a country – to be represented at the top table of global sport for the Four Year Period, but should allow those athletes who can show that they are not implicated in any way in the previous doping scheme or in its cover up, and who are deemed to have been subjected to an adequate level of advance in- and out-of- competition testing, to continue to participate in the Covered Events in that period, albeit on a neutral basis, not as representatives of Russia. This strikes the right balance between punishing the guilty, with a powerful and deterrent message, while protecting the innocent.

WADA I&I has the names of all of the Russian athletes mentioned in the McLaren reports and/or listed in the hidden part of the Moscow laboratory's LIMS database, and can identify those athletes

whose analytical data have been tampered with. In addition, WADA will work with the International Federations to ensure that they implement the 'neutral athlete' mechanism strictly, consistently, and fairly. As a result, no athlete implicated by the Russian doping and protection scheme will be able to participate in the Covered Events, even on a neutral basis.

12. Will WADA provide guidance to IFs, Major Event Organizers (MEOs) and other testing authorities on what testing criteria will be required in order to determine if a Russian athlete is eligible to compete on a neutral basis in a Covered Event?

The CRC recommendation specifically calls for any Russian athlete seeking to participate in a Covered Event on a neutral basis to be subject to adequate in-competition and out-of-competition testing prior to the event in question (with WADA to determine what is adequate in each case).

However, to ensure consistency of approach in relation to participation of authorized neutral athletes across different Covered Events, in addition to identifying all of the Russian athletes mentioned in the McLaren reports and/or listed in the hidden part of the Moscow laboratory's LIMS database, and those athletes whose analytical data have been tampered with, WADA will provide clarity with regard to what would constitute adequate testing of athletes in the lead-up to a Covered Event. That information would be circulated as soon as practicable once the final decision has been announced by CAS.

13. Will WADA or the IOC have oversight over the authorized neutral athlete mechanism, to ensure the criteria are met, and will they be uniform and standard across all sports?

The CRC recommendation is that WADA ExCo (or CAS, if it sees fit) specifies the mechanism to be used by Signatories (which may include the involvement of representatives of appropriate Athlete Committees) to determine whether a particular athlete meets the conditions and so should be permitted to participate in the event(s) in question as an authorized neutral athlete. It also states that WADA will monitor each affected Signatory's implementation of that mechanism, and its application and enforcement of the strict conditions, as part of WADA's overall compliance program, to ensure consistent application of minimum standards.

The conditions may have to be adapted to address particular aspects unique to certain sports/Covered Events, due to the many variations that exist across the dozens of sports and disciplines affected, but any criteria would have to be approved by WADA and would be harmonized to the greatest extent possible.

14. Could a Signatory unilaterally issue a “blanket ban” for its World Championship or for its events in a multi-sport event, such as the Olympics or Paralympics?

If a Signatory considers that it has a sound legal and factual basis not to permit Russian athletes to compete as authorized neutral athletes in Covered Events, nothing in the Code or the ISCCS prevents it from doing so.

15. What will this ban ‘look like’ during the Olympic Games? Will it be similar to PyeongChang 2018?

If CAS upholds the proposed consequences, Russia will not be present at any editions of the Olympic Games and Youth Olympic Games held within the Four-Year Period:

- No Russian Government officials or representatives may attend the Games.
- Neither the ROC President, the Secretary-General, the CEO, nor any members of the Executive Board/Governing Board of the ROC may attend the Games.
- The Russian flag may not be flown at the Games.
- There cannot be any Russian team at the Games.
- Russian athletes may only participate in the Games if they demonstrate that they are not implicated in the original doping scheme or its subsequent cover up and that they have been subject to adequate testing, and even then they may only compete in a neutral capacity, i.e. as authorised neutral athletes, not as representatives of Russia.
- Russia may not host or bid to host any Olympic Games or Youth Olympic Games in the Four-Year Period, or the 2032 Olympic Games.

Further details of the practical implementation of these consequences will be discussed and confirmed as part of the pending CAS proceedings.

16. Where Russia has already been awarded the right to host Covered Events staged in the Four-Year Period, must they be withdrawn from Russia and reassigned to another country?

In such a case, Article 11.1.1.15(a) of the ISCCS states that the event must be withdrawn from Russia and re-assigned to another country, unless it is legally or practically impossible to do so.

17. Who would determine whether it is legally and practically possible to withdraw hosting rights for Covered Events scheduled to be held in Russia during the Four-Year Period?

ISCCS Article 11.1.1.15 states that the Signatory that awarded Russia the right to host the Covered Event in question must assess whether it is legally and practically possible to withdraw that right and re-assign the event to another country.

To remain compliant with the Code, a Signatory that decided not to withdraw a Covered Event from Russia and re-assign it to another country would have to demonstrate to WADA:

- that it had ensured that it had due authority under its statutes, rules and regulations, and/or hosting agreements to withdraw an event from the country of a non-compliant NADO; and
- despite that, it had properly determined, by a good faith assessment of the particular facts and circumstances, that it was not legally or practically possible to withdraw its Covered Event



from Russia (e.g. because there is not enough time to make alternative hosting arrangements for the event).

18. What will happen to RUSADA during the Four-Year Period when the consequences apply?

Article 11.1.1.3 of the ISCCS provides that a non-compliant Signatory may be stopped from carrying out some or all of its anti-doping activities, unless WADA considers that the Signatory is in a position to implement such anti-doping activities in a compliant manner.

The WADA ExCo concurred with the CRC's view that "the evidence (including from WADA's recent audits of RUSADA's operations) indicates that RUSADA's work is effective in contributing to the fight against doping in Russian sport, and that it is working productively in cooperation with other Anti-Doping Organizations, including in investigations within Russia". Therefore, the ExCo accepted the recommendation not to impose any special monitoring or supervision or takeover of RUSADA's anti-doping activities in the Four-Year Period.

However, one of the proposed conditions of reinstatement is that WADA remains satisfied throughout the Four-Year Period that RUSADA's independence is being respected and there is no improper outside interference with its operations.

As a result, RUSADA will continue to carry out its work, subject to the rigorous compliance procedures, but also with this further reinstatement condition in place. This means that effective anti-doping activities can continue in Russia for the benefit of clean athletes in Russia and worldwide.

19. What resources have been used for this investigation since it first began in 2015?

The entire WADA I&I Department has worked on this CRC-mandated investigation since January 2019, totaling an estimated 6,000+ hours, and with a total cost of approximately USD 2 million. In total, since the beginning of 2015, WADA has spent in the region of USD 8 million on this case. Under the terms of the CRC recommendation, Russia will have to pay for WADA's costs on this file since January 2019, plus a fine to WADA of 10% of its 2019 income or USD 100,000, whichever is lower. That is the maximum under the applicable rules of the ISCCS.