

2027 CODE & IS UPDATE PROCESS

International Standard for Intelligence and Investigations

Concepts for Consideration and Feedback

Executive Summary

The International Standard for Intelligence and Investigations (ISII) is a new International Standard dedicated to requirements for conducting intelligence and investigations activities. To date, these standards were part of the International Standard for Testing and Investigations (ISTI). However, evolution within the anti-doping landscape necessitates that a dedicated standard be applied to the practice of intelligence gathering and investigation. Moreover, such a standard is wanted by those within the anti-doping intelligence and investigations community.

Code Article 5.7 requires that an Anti-Doping Organization (ADO) “[has] the capability to conduct, and shall conduct, investigations and gather intelligence” as required by the ISTI. In its current form the ISTI establishes the minimum standards an ADO must attain regarding the “gathering, assessment and use” of intelligence, as well as conducting an investigation.

This document is not a draft of the proposed ISII. Rather, it is a conceptual document where concepts and their related context will be explained, and stakeholder feedback as it relates to a concept shall be sought. This feedback will help to inform the ISII Drafting Team during the subsequent phase, the ‘First Drafting Phase’ following which stakeholders will have an opportunity to provide input directly related to the precise text and wording of each article in the ISII.

Concept #1 – Gathering, Assessment, and Use of Anti-Doping Intelligence

Much of the ISII content will be founded on the previous requirements as outlined in the ISTI. Accordingly, as it relates to the gathering, assessment, and use of anti-doping intelligence, the ISII Drafting Team has chosen to retain certain concepts set out at ISTI Article 11 as a guide for establishing the key areas which it intends to include in the ISII. Where applicable, the ISII Drafting Team has outlined the reasoning for the inclusion of any mandatory requirements.

- **ADOs must (“shall”) ensure they are able to obtain, assess and process anti-doping intelligence from all available sources (as per ISTI Article 11.1).**

The ISII Drafting Team considers this to be a foundational objective, and it should remain a mandatory requirement in the ISII.

- **ADOs must (“shall”) do everything in their power to ensure that they are able to capture or receive anti-doping intelligence from all available sources (as per ISTI Article 11.2.1).**

The ISII Drafting Team considers this to be a foundational capacity and it should remain a mandatory requirement in the ISII.

- **ADOs must (“shall”) have policies and procedures in place to ensure that anti-doping intelligence captured or received is handled securely and confidentially, that sources of intelligence are protected for these purposes (as per ISTI Article 11.2.2).**

The ISII Drafting Team considers this to be a foundational capability and it should remain a mandatory requirement. However, the ISII Drafting Team proposes to establish better guidance on the issue of human sources (e.g., source registration, management, and use). The issue of human sources is the subject of a specific concept below (see Concept #2).

- **ADOs must (“shall”) ensure that they are able to assess all anti-doping intelligence upon receipt for “relevance, reliability, and accuracy” (as per ISTI Article 11.3.1).**

The ISII Drafting Team considers this to be a foundational capability and it should remain a mandatory requirement in the ISII.

- **All anti-doping intelligence captured or received by an ADO should be “collated and analyzed to establish patterns, trends and relationships” that may assist the work of an ADO (as per ISTI Article 11.3.2).**

The ISII Drafting Team understands the history and purpose of this non-mandatory requirements. However, it is concerned by the consequences of those ADOs who neither collate nor analyze their anti-doping intelligence, and by those ADOs who have insufficient resources (e.g., a trained analyst) to conduct any analysis of their intelligence. The ISII Drafting Team proposes to provide clarity around the expectations of collating and analysis to provide ADOs a better understanding of this requirement.

- **The ISTI details the purposes for which anti-doping intelligence must (“shall”) be used (e.g., developing and revising a testing plan) (as per ISTI Article 11.4.1).**

The ISII Drafting Team acknowledges the importance of testing, generally, and intelligence led testing, more particularly. However, the ISII Drafting Team notes that globally less than 1% of samples collected produce an Adverse Analytical Finding (“AAF”). Moreover, the use of anti-doping intelligence is broader than developing a test program. It can be used to drive prevention and deterrence strategies (e.g., education, proactive outreach, communication strategies etc.). thereby, enabling ADOs to better distribute their limited resources to areas of highest risk. Consequently, direction within the ISII on the effective use of intelligence regarding non-analytical cases will be considered.

- **ADOs “should also develop and implement policies and procedures for the sharing of intelligence” (as per ISTI Article 11.4.2).**

The ISII Drafting Team notes that this is not a mandatory requirement in the ISTI. Nevertheless, the ability to share information with relevant entities and authorities is considered by the ISII Drafting Team as fundamental to the effectiveness of an anti-doping program and representative of the need for a holistic and collaborative approach to anti-doping. Non-analytical violations are invariably the result of investigation, often involving external stakeholders. In the absence of an established and robust procedural framework, intelligence sharing is often ad hoc and inconsistent. The WADA European I&I Capacity and Capability Project is currently fostering relationships between European based ADOs and relevant law enforcement authorities. An established and mandatory obligation to implement policies and procedures may greatly enhance the collaboration between ADOs and law enforcement. To this end, the

ISII Drafting Team is considering making the implementation of policies and procedures a mandatory requirement.

- **ADOs should develop and implement policies and procedures to facilitate and encourage confidential sources (e.g., informants, whistleblowers) (as per ISTI Article 11.4.3).**

The ISII Drafting Team considers the area of human sources to be one of the most important to the ISII and an area requiring significant consideration, review, and clarity. This matter is the subject of a specific concept below (see Concept #2).

Concept #2 – Human Source Management, Use, and Oversight

The ISII Drafting Team acknowledges the importance of human sources, as well as the potential risks posed by a deficient source handling program (e.g., policies, procedures). This area has remained largely untouched by the ISTI. The ISII Drafting Team proposes to provide significant clarity and guidance around this topic. The WADA Sport Human Intelligence Network (“SHIN”) has already expressed the importance of this issue to the ISII Drafting Team on this topic. This concept is linked in many ways to Concept #4 below.

Concept #3 – Investigations

As previously mentioned, much of the ISII content will be founded on the previous requirements as outlined in the ISTI. Accordingly, as it relates to investigations, the ISII Drafting Team has chosen to retain certain concepts set forth at ISTI Article 12 as a guide for establishing the key areas which it intends to include in the ISII. Where applicable, the ISII Drafting Team has outlined the reasoning for the inclusion of any mandatory requirements.

- **The objective of ISTI Article 12 was to establish standards for the efficient and effective conduct of investigations into relevant matters (e.g., AAFs, adverse passport findings, non-analytical violations, involvement of complicit athlete support personnel (ASP)) (as per ISTI Article 12.1). Moreover, the ISTI detailed that the purpose of an investigation was to find all inculpatory and exculpatory evidence, including evidence of a breach of the Code or applicable International Standard (as per ISTI Article 12.1.1).**

The ISII Drafting Team agrees that setting standards for the “efficient and effective conduct of investigation” are vital to the ISII, particularly given that in certain instances the Code mandates the conducting of an investigation. The ISII Drafting Team therefore proposes to provide clarity on this issue, including on any previous potential conflict between the ISTI and the operational practice of some ADOs (e.g., ISTI Article 12.1.1 stipulates that the purpose of an investigation is to “rule out” a person’s involvement in a violation; however, some ADOs commence a results management process without ever interviewing the athlete, or investigating an athlete’s claim of defense).

- **An ADO must (“shall”) ensure that they are able to investigate matters “confidentially and effectively” (as per ISTI Article 12.2.1).**

The ISII Drafting Team considers this to be a foundational capability and it should remain a mandatory requirement in the ISII.

- **An ADO must (“shall”) gather, record, and fully document all relevant information “as soon as possible”, to develop “admissible and reliable evidence”. Moreover, an ADO must (“shall”) conduct all investigations “fairly, objectively and impartially” (as per ISTI Article 12.2.2).**

The ISII Drafting Team considers this to be a foundational capability and capacity, and it should remain a mandatory requirement in the ISII. The ISII Drafting Team proposes to provide clarity around the notions of a fair, objective, and impartial investigation, as well as the means by which an ADO should store information.

- **An ADO should make use of “all investigative resources reasonably available” to it to conduct its investigation (as per ISTI Article 12.2.3).**

The ISII Drafting Team considers this an important area of the ISTI and proposes to carry this over to the ISII while providing enhanced clarity and firm guidance around the effective use of resources (e.g., law enforcement collaboration, Anti-Doping Intelligence and Investigations Network (ADIIN), collaboration with other ADOs).

- **Athletes and ASPs who fail to comply with the Code Article 21 requirement to “cooperate” with investigation should be subject to “disciplinary action” under the applicable rules of their sport, and where the conducted amounts to subversion of the investigation process, an applicable Code Article 2 anti-doping rule violation (e.g., tampering) should be charged (as per ISTI Article 12.2.4).**

The ISII Drafting Team considers this the area of cooperation (as per Code Article 21) to be one of the more ambiguous issues within the ISTI and Code. For example, the terms “cooperate”, and “subversion” are not defined by the Code. Consequently, the ISII Drafting Team proposes to consult with the Code Drafting Team in an endeavor to provide greater clarity around issues of this kind. ADIIN has expressed significant interest in improving the workability of this area. The ISII Drafting Team will also engage with the Code Drafting Team on the viability of including within the Code a violation for not “cooperating” with an ADO investigation.

- **An ADO must (“shall”) come to a decision “efficiently and without undue delay” as to whether proceedings should be commenced against an athlete or other person (as per ISTI Article 12.3.1).**

The ISII Drafting Team considers this to be a foundational capability and it should remain a mandatory requirement in the ISII.

- **An ADO shall comply with the International Standard for Results Management for any proceedings commenced (as per ISTI Article 12.3.2).**

The ISII Drafting Team considers this to be a foundational capability and it should remain a mandatory requirement in the ISII.

- **Where a decision is made not to commence proceeding against an athlete or other person, then this decision shall be communicated to all relevant parties (e.g., WADA, applicable International or National Federation), and an ADO must (“shall”) provide that relevant party all necessary information to allow that entity to determine whether to appeal against the decision (as per ISII Article 12.3.3).**

The ISII Drafting Team considers this to be a foundational capability and it should remain a mandatory requirement in the ISII.

Concept #4 – Substantial Assistance

The ISII Drafting Team has identified significant confusion and inconsistency around the issue of substantial assistance (Code Article 10.7.1); for example, its workability and application across the various ADO jurisdictions, as well as its use and promotion by ADOs. The ISII Drafting Team is aware of frustration experienced in various jurisdictions by investigators on the issue of substantial assistance. This topic is also being addressed by the Code Drafting Team (see Concept #6 of the Code Concept Paper) and the ISII Drafting Team will accordingly work closely with the Code Drafting Team to simplify the complexities around this issue and provide guidelines of best practice in dealing with athletes and other persons on the issue of substantial assistance.

Concept #5 – Investigations of AAFs and Non-Analytical Violations

The ISII Drafting Team has identified a lack of consistency amongst ADOs in the investigation of AAFs. Many ADOs treat an AAF as an administrative exercise, like the end of an investigation, and do not consider other possible associated non-analytical violations (e.g., Code Articles 2.2 (Use), 2.6 (Possession), 2.9 (Trafficking)), or intelligence that may be gathered. Some ADOs consider an AAF as the start of an investigation and use investigators to notify an athlete of an AAF, and establish how and why the AAF occurred. The earlier an investigator is introduced to a case, the greater the chances that the truth will be discovered. The ISII Drafting Team propose to provide significant clarity and guidance around this topic.

Concept #6 – An Accessible Standard

The ISII Drafting Team proposes to consider holistically the notion of an ‘acceptable standard’, i.e., a standard that does not unfairly disadvantage an ADO that is poorly resourced compared to an ADO that is well resourced. However, the ISII Drafting Team is conscious of the need to produce a standard that is practically and operationally useful. This noted, it is an unfortunate reality of anti-doping that many ADOs do not have a truly effective intelligence and investigative capability or are so poorly resourced that most of their energy is expended on ineffective testing programs. Additionally, the ISII Drafting Team proposes to consider the practicalities of policing the new Standard, including matters like how to assess a stakeholder’s compliance, and the resources required to properly audit a stakeholder’s compliance with the ISII. Stakeholder’s feedback on this will be valuable to the ISII Drafting Team.