

11 December 2017

Mr. Olivier Niggli
Director-General, WADA

Dear Olivier:

Re: Objective Evaluation of prospective Olympic Athletes of Russia

Following consultation with many members and on behalf of iNADO we would like to contribute to the important work ahead. We note that the International Olympic Committee Executive Board (IOC EB) delegated responsibility for evaluating athlete eligibility to a soon-to-be comprised panel into which, we understand, the World Anti-Doping Agency (WADA) will have input.

The IOC EB has determined that for the Winter Games 2018 in PyeongChang only Russian athletes who are “considered clean to the satisfaction of the panel” will be considered for invitation. Underpinning this process is the earlier determination of the IOC EB that Russian athletes “have to assume the consequences of what amounts to a collective responsibility in order to protect the credibility of the Olympic competitions, and the ‘presumption of innocence’ cannot be applied to them.”¹

In addition to certain other criteria established by the IOC EB, such athletes “must have undergone all the pre-Games targeted tests recommended by the Pre-Games Testing Task Force” and “undergone any other testing requirements specified by the panel to ensure a level playing field.”² We believe this high burden of proof, must be individually met by each applicant athlete using objective and neutral criteria in a transparent fashion, in order to provide assurance that the rights of clean athletes have been fully protected.³

Respectfully, we write to request that WADA recommend objective criteria to guide the evaluation panel.

¹ IOC EB Decision 24 July 2016.

² IOC EB Decision 5 December 2017.

³ Additionally, under these circumstances, each IOC decision regarding eligibility is potentially subject to review by the Court of Arbitration for Sport (CAS), which seems to require an appropriate evidentiary record be developed and maintained.

**Procedural Fairness to Clean Athletes and Upholding Their Right of
Review**

To meet the inviolable standards of the Charter and Code it is critical that all eligibility determinations be made in a timely and transparent fashion with sufficient time for appeals by clean athletes. For the interests of all parties, avoiding the confusion and last-minute decision-making which occurred in the lead up to Rio 2016 is essential.

Based on the experience of our members in implementing Code compliant anti-doping programmes and membership on a number of Pre-Games Task Forces we attach, for your consideration, some recommendations of minimum criteria to be used by the panel to review athletes for potential invitations. We recognize the challenges associated with identifying robust, objective and transparent criteria and applying them in a uniform and defensible manner. Nonetheless, the benefits to all participants would be apparent and the credibility of international anti-doping work would be enhanced.

Offer of Assistance

We are hopeful that WADA will use its standing and expertise to recommend and announce robust, objective criteria along the lines we have outlined.

In the event that iNADO, and any of its members with relevant expertise, can assist in any further way in this process we are at your service.

Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Yours sincerely,



Graeme Steel
Chief Executive Officer
INADO

Proposed Objective Criteria

The following criteria are offered for your consideration. We note that in preparing this letter, and specifically these criteria, there were (unsurprisingly) different opinions from our members as to the applicability of each criterion and/or the specific requirements contained within each one.

a. **Period of testing whereabouts and the availability for testing:** The potential athlete invitee must have been available for testing and subject to out of competition testing in a Code-compliant anti-doping program for an appropriate period. We would recommend a minimum of twelve (12) months prior to the 2018 Games unless sufficient justification exists for shortening this period (e.g. we are aware in many countries hockey players are only identified six (6) months prior to the games). It may be appropriate that, in some cases, it is a requirement that the athlete has been part of a whereabouts programme and has complied in full. Where the athlete has not been subject to the whereabouts programme, particular attention should be paid to the timing of any tests conducted. It follows that any athlete who has lived and/or trained in one of the so-called ‘closed cities’ in Russia, during the past 12 months, should be excluded from consideration.

b. **Out-of-competition (OOC) testing:** While athletes cannot choose to be tested, nor can they decide on what substances the lab will analyze for, we recommend the panel be mindful of the test context and histories of each applicant. The appropriate minimum number of samples must be based on an individualized risk assessment for that applicant taking into account; the sport and discipline, the athlete’s biological passport and other factors specific to the athlete, during the 12 month period from 1 January 2017 to 31 December 2017. (For example potential athlete invitees in “high risk” sports⁴ could be required to have been subject to at least four (4) OOC urine collections and at least three (3) blood collections, including an appropriate number of special analysis *e.g.* for ESA, GH/GHRFs.) The required collections should be the sum of those conducted by any World Anti-Doping Agency (WADA)-compliant anti-doping organization (ADO), no more than one of which in each category of blood and urine may have been collected during December 2017 in order to satisfy these criteria.

Potential athlete invitees in medium and low risk sports may potentially qualify by satisfying a different but comparably robust level of testing.

It will be difficult to fully consider tests performed in January 2018 in the review process due to the time lag necessary for thorough analysis of samples, the lack of time to conduct any potentially necessary follow up analysis and the strong interest in ensuring that athletes have been tested over a sufficiently lengthy period of time

⁴ High risk sports should include, at a minimum: alpine skiing, biathlon, bobsleigh, cross-country skiing, ice hockey, and short and long track speedskating.

in advance of the Games to enhance the credibility of the determination the athlete has been subject to rigorous and robust pre-Games testing.⁵

c. Athlete Biological Passport (applicable mandatorily for athletes in the higher risk sports/disciplines as set out in the TDSSA): The same concern as above applies to the ABP for athletes - while athletes cannot choose to have an ABP nor can they decide the testing profile they will face, we recommend the panel be mindful of the test context and histories of each applicant. Any atypical or adverse steroidal or hematological passport findings associated with potential athlete invitees shall have been appropriately addressed by the relevant passport custodian including Athlete Passport Management Unit (APMU) review, results management and/or strategic follow-up testing. Any potential athlete invitee with a previous anti-doping rule violation based on a hematological Adverse Passport Finding shall (notwithstanding the above point dealing with OOC testing) have been subject to additional strategic follow-up testing that comfortably satisfies the APMU and the evaluation panel that the issue has been fully and appropriately addressed. In every instance, the potential athlete invitee must have a current hematological passport APMU evaluation of “Normal.”

d. Assessment of Athlete Support Personnel from Whom the Applicant Has Received Service: Although this could be very difficult to objectively assess, we believe potential athlete invitees should not have been coached within the past two (2) years by any individual sanctioned or identified by any WADA Independent Commission, WADA Independent Person, IOC Commission or the CAS as having participated in doping of athletes.

e. Clearance through McLaren EDP, LIMS and other Forensic Evidence Review: Any potential athlete invitees cannot be negatively referenced in any WADA Independent Commission or Independent Person Report, IOC Commission decision or report, McLaren evidence disclosure packages and/or in the Laboratory Information System (LIMS)⁶ database of the former WADA-accredited Moscow Laboratory in the possession of WADA. .

f. No pending or potential cases and no provisional suspension: Potential athlete invitees may not be subject to any pending or potential case for an anti-doping rule violation or disqualification of results pursuant to a potential rules violation and may not be serving a provisional suspension as of 28 January 2017.

We note in the IOC EB decision the following reference: “Athletes must not have been disqualified or declared ineligible for any Anti-Doping Rule Violation.” We

⁵ Of course, pre-Games testing should continue throughout January and February 2018.

⁶ It is understood that an evaluation of the LIMS data will require reasonable assumptions to be made to link athlete sample data to ADAMS information or other information by which athletes may be tied to data concerning their biological samples.

strongly encourage the panel to refrain from applying this criterion as written. Since the IOC has lost twice now at CAS trying to exclude athletes who had ADRVs and served the ban and now wish to compete, we believe that this provision should only be applied to any athlete who is serving an active or provisional suspension.

g. Mandatory Interview: Consistent with WADA Code Articles 21.1.5 and 21.1.6, potential athlete invitees must submit to an interview conducted by WADA or a Code-compliant, independent national anti-doping agency who is investigating a potential ADRV. WADA or such NADO should be required to declare to the Panel their interest in the applicant athlete prior to such athlete participating in the interview process. In such interviews, during which the athlete has been asked about any anti-doping rule violations or related matters of themselves and all others of which they may have any knowledge, a determination must be made that there is no reason to believe that their answers have been less than fully truthful.

Potential athlete invitees should be required in writing to agree that any failure to provide full and complete testimony will result in denial of their application and that providing any false or misleading information in this process may lead to a determination that they have committed an anti-doping rule violation which could subject them to up to four (4) years ineligibility.⁷ Before being allowed to compete all potential athlete invitees should sign a written transcript of their testimony.

⁷ Code Article 2.5 (tampering); Code Article 2.9 (complicity); Code Article 21.1.6 (duty of athletes to cooperate with ADOs investigating anti-doping rule violations).