

Implementation of the WADA Code in the European Union*

Introduction

The fight against doping has become an increasingly important theme on the European agenda.

On this subject, the White Paper on Sport published by the European Commission on 11 July 2007 stated the following:

The EU would benefit from a more coordinated approach in the fight against doping, in particular by defining common positions in relation to the Council of Europe, WADA and UNESCO, and through the exchange of information and good practices between Governments, national anti-doping organisations and laboratories. Proper implementation of the UNESCO Convention against Doping in Sport by the Member States is particularly important in this context.

The Commission will play a facilitating role, for example by supporting a network of national anti-doping organisations of Member States.

In the past few years, activities in this field have essentially concentrated on the Code of the World Anti-Doping Agency (WADA) which is the subject of the Copenhagen Declaration and the UNESCO Convention against Doping in Sport. Naturally, the work of the informal European working party, the 'EU Working Group on Anti-Doping', actively contributes to this.

Despite the increased interest in this subject, in practice the central objective of the Code, i.e. to ensure harmonised, coordinated and effective anti-doping programmes at both an international and national level with regard to the detection, deterrence and prevention of doping, is still far from being realised for a variety of reasons. The necessity for a European framework for cooperation in the fight against doping, on the basis of the Code, therefore requires further study.

An initial requirement for the achievement of strict agreements on a European level is that reliable information is available about the state of affairs in each Member State.

With a view to the Belgian Presidency of the European Union in the second half of 2010, the Flemish Minister for Sport, Philippe Muyters, has asked the T.M.C. Asser Institute of International Law in The Hague to carry out a thorough study of the application of the Code within the European Union and to catalogue its findings.

In this report, the T.M.C. Asser Instituut presents the results of its study. Its inventory was undertaken on the basis of the attached questionnaire which was distributed amongst the relevant government departments and/or agencies with primary authority in the area of sport in each Member State and amongst the National Anti-Doping Organisations (NADOs) in the European Union. Included with this study is a CD-ROM containing the text of the Code, the International Standards, the UNESCO Convention against Doping in Sport, as well as national legislation and sports rules and regulations governing anti-doping which were received and collected as supplements to the answers.

As far as Belgium is concerned, a distinction should be made between the four different authorities authorised to fight doping, namely: the Flemish Community, the French Community, the German-speaking Community and the Joint Community Commission.**

The study was concluded on 6 August 2010.

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** For practical reasons, in the Conclusions of the study the Communities of Belgium were counted as separate countries, whenever differences were found in the replies of those Communities.

Conclusions

A. Relationship between the national rules and regulations and the WADA Code

A.1 In what way has the UNESCO Anti Doping Convention been implemented in your country?

One EU country is not yet a State Party to the UNESCO Convention against Doping in Sport.

Implementation of the WADA Code

- in a Doping Act: 10 EU countries
- in a Sports Act: 5 EU countries
- in other Acts: 9 EU countries
- Doping rules in regulations of sports authorities: 3 EU countries
- No implementation: 1 EU country

A.2 On which points do the anti-doping rules and regulations in your country differ from the WADA Code?

- In 20 EU countries no differences exist between the WADA Code and the anti-doping rules;
- In 5 EU countries the anti-doping rules differ from the WADA Code on some points;
- 3 EU countries are in the process of bringing the law into conformity with the principles of the new version of the WADA Code;
- In 1 EU country the process of implementation has been abandoned.

A.3 On which points does your country's practice differ from the prevention of doping envisaged in the Code?

- In 15 EU countries practice does not differ from the prevention of doping envisaged in the Code;
- In the remaining EU countries practice differs on some points, namely:
 - contracts on doping controls concluded with sport organizations;
 - the cost of transfer and analysis of doping samples;
 - dissemination of personal information;
 - frequency of in- and out-of-competition doping controls;
 - the modality of doping sanctions;
 - the publication of doping sanctions;
 - quality of doping control officers;
 - the right to appeal;
 - the use of ADAMS;
 - the whereabouts issue.

A.4 Have your rules and regulations been declared WADA compatible with the present WADA Code, 2009 version?

- WADA has declared the rules and regulations of 15 EU countries to be compatible with the present WADA Code;
- The rules and regulations of 13 EU countries have not yet been declared compatible with the present WADA Code;
- The rules and regulations of 1 EU country have been declared incompatible with the present WADA Code.

A.5 Does your country make use of the Anti-Doping Administration and Management System (the ADAMS database), which the WADA makes available to all stakeholders?

- 11 EU countries make unrestricted use of ADAMS.
- This means that ADAMS is used for whereabouts, Therapeutic Use Exemptions, mission orders and results management.
- 7 EU countries make restricted use of ADAMS.

- 6 EU countries are currently in the process of implementing ADAMS.
- 5 EU countries do not make use of ADAMS.

A.6 Has a TUEC or Therapeutic Use Exemption Committee been established in your country?
Only in 3 EU countries a Therapeutic Use Exemption Committee has not been established.

A.7 Are all five International Standards of the WADA and the 2009 Code fully applicable in your country?

- All five International Standards of the WADA and the 2009 Code are fully applicable in 13 EU countries.
 - The Standard for Laboratories is not applicable in 5 EU countries.
 - Work on the implementation of the International Standard for Protection of Privacy is ongoing in 5 EU countries.
 - In 2 EU countries the International Standard for the Protection of Privacy is only applicable to the extent that it does not infringe Directive 95/46/EC or national legislation for privacy protection.
 - In 2 EU countries the International Standard for Protection of Privacy is not applicable.
 - In 1 EU country two International Standards are applicable (laboratories and the list of banned substances).
 - In 2 EU countries none of the Standards are applicable.

B. Specific points of attention

B.1 With which anti-doping organisations (ADOs) - both national and international - are you currently exchanging information?

- Apart from communicating with other NADOs and WADA, which NADOs are obliged to do in case of a positive finding, all NADOs have their own specific circles in which information is exchanged.
- Only 1 EU country reports that it does not exchange information.

B.2 Are the doping sanctions imposed by other ADOs recognized and fulfilled in your country?

- 18 EU countries recognize and carry out doping sanctions imposed by foreign ADOs.
- 7 EU countries conditionally recognize and carry out doping sanctions imposed by foreign ADOs.
- 4 EU countries do not execute foreign doping sanctions.

B.3 What is your opinion concerning a mechanism for reciprocity (mutual recognition) of doping sanctions between the 27 EU Member States?

- All EU countries are in principle in favour of the idea of mutual recognition of doping sanctions between the 27 EU Member States.
- Some EU countries are only in favour provided that, inter alia:
 - the sanctioning bodies operate according to the WADA Code;
 - the rights of the defence are respected.
- Other EU countries are in favour of the idea of mutual recognition only if all EU countries would have harmonized rules and identical sanctions.

B.4 Do you ever carry out doping controls at the request of another Member State or NADO?

- The NADOs of 26 EU countries carry out doping controls at the request of another Member State or NADO.
- 1 EU country is not in a position to carry out tests for another NADO.

B.5 Which rules and regulations apply in your country concerning trade and distribution of doping products?

- The trade and distribution of doping products is a criminal offence prohibited and sanctioned by:
 - the Criminal Code in 8 EU countries
 - drugs laws in 10 EU countries
 - the Sports Act in 4 EU countries
- 5 EU countries have no existing laws and regulations relating to trade and distribution of doping products.

B.6 What are your NADO's statutes?
NADOs in EU countries can be bodies that are subordinate to a Ministry or acting independently. Besides public bodies, they can be foundations under private law or have corporate status.

B.7 How has your national registered testing pool for doping tests been defined and what does it consist of, and what is the number of sportsmen assembled in the registered pool on 1 February 2010?
Because NADOs are free to decide which athletes will be included in its national registered testing pool the composition of these pools differs widely from country to country.
The number of sportsmen included in the registered pool on 1 February 2010 differs widely from country to country.

B.8 What is the relationship between the sport federations, the public authorities and the NADO in your country?

- In nearly all EU countries the relationship between the NADOs, the sport federations and the public authorities has been defined in some way.
- Cooperation between the sports federations and the NADOs is determined by either:
 - a legally subordinate position of the sport federations (5 EU countries);
 - the allocation of state funding (14 EU countries); or
 - agreements (5 EU countries).
- The situation in 3 EU countries is not clear.

B.9 Does your NADO already apply the WADA's Athlete Biological Passport programme in the fight against doping?

- The NADOs in 5 EU countries apply the WADA's Athlete Biological Passport programmes.
- 3 EU countries will introduce the programmes in 2010.
- The NADOs in 2 EU countries use programmes which are similar to WADA's Athlete Biological Passport programmes.
- In 2 EU countries the programmes are the object of study.
- The NADOs in 14 EU countries have not yet implemented the Athlete Biological Passport programmes.