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| From: | General Secretariat of the Council |
| To: | Permanent Representatives Committee (Part 1) |
| Subject: | EU and its Member States contribution to the revision of the World Anti-Doping Code - Endorsement |

1. The World Anti-Doping Code provides the basic framework for harmonised anti-doping policies, rules and regulations within sports organisations and among public authorities. The World Anti-Doping Agency (WADA) has launched a Code revision process with a view to adopting a revised Code at the fifth World Conference on Doping in Sport in Katowice, Poland, in November 2019.
2. Given that the World Anti-Doping Code has an impact upon different aspects of EU legislation, notably data protection and free movement, the Working Party on Sport¹ has prepared, at the invitation of the Presidency, an EU and its Member States' contribution to the first phase of the World Anti Doping Code review process. At its meeting on 15 March 2018, the Working Party on Sport reached a broad consensus on the text of the EU contribution set out in the Annex to this Note.

¹ The Working Party used as a basis a text prepared by the group of experts on anti-doping that met on 6 March 2018.

The Committee of Permanent Representatives is invited to:

- endorse the text of the EU and its Member States contribution set out in the Annex to this Note
 - authorise the Presidency to submit the EU and its Member States contribution to WADA.
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1. INTRODUCTION

The EU and its Member States cannot yet provide a specific wording for the different articles, but have highlighted areas which the EU and its Member States would like WADA to consider when elaborating the first draft of a revised Code. The EU and its Member States share the view that the following elements could be considered in the World Anti-doping Code Review process.

2. DATA PROTECTION

The EU and its Member States recall the concerns they previously raised² in relation to the International Standard for the Protection of Privacy and Personal Information on related provisions of the WADA Code and on other privacy issues in the context of the fight against doping in sport by WADA and (national) anti-doping organisations. The EU and its Member States draw WADA's attention to the recommendations included in those previous submissions and invite WADA to consider the recommendations which have not yet been addressed.

The EU and its Member States recall that WP29 considered that processing of personal data for anti-doping activities could not be based on consent and that other legal bases had to be explored. WP29 also questioned the compliance with principles relating to the processing of personal data, in particular in view of retention periods for storing different data on athletes and the publication of the names of athletes who have violated anti-doping rules (Article 14.3 of the Code).

² See the second opinion 4/2009 on the World Anti-Doping Agency (WADA) International Standard for the Protection of Privacy and Personal Information, on related provisions of the WADA Code and on other privacy issues in the context of the fight against doping in sport by WADA and (national) anti-doping organizations, adopted on 6 April 2009 which was part of the input previously provided by the EU and its Members States.

A more precise definition of the different purposes for concrete processing operations specified in the Code is needed.

In order to comply with EU law, EU NADOs must ascertain, when transferring personal data to third countries, that such transfers are compliant with the requirements of Chapter V of the General Data Protection Regulation. Notably, they must ascertain that any onward transfer from such third countries to another non-EU country shall comply with these requirements. In this regard, WP29 stressed that such transfers "will have to meet the requirement of an adequate level of protection in the destination country. If this level cannot be considered adequate, transfers can only take place on the basis of certain exceptions mentioned in article 26 of the Data Protection Directive, provided that they are not regular or massive." In order to ensure smooth transfers of personal data from EU Member States, WADA may consider addressing those issues in its revised Code or aiding NADOs in the development of additional safeguards.

3. ATHLETES' RIGHTS

The EU and its Member States consider that the rights of athletes, including minors, must be properly guaranteed in the Code. The Charter of Athletes' Rights, which is in the making, could become an integral part of the Code, depending on its final content. The EU and its Member States encourage WADA to consider if the sanctions in the Code are appropriate for minors.

4. GOOD GOVERNANCE

Acknowledging that discussions on the reform of the governance of WADA are ongoing, the EU and its Member States would like to recall that good governance is a necessary process and fundamental component of the fight to protect the integrity of sport.

All actors in the anti-doping system should implement the basic principles of good governance, such as accountability, transparency and democracy (Article 20 of the Code). In order to fully protect the rights of clean athletes, the governance structures of WADA and Signatories must be free from any conflicts of interests.

The contents of the statistical report that Anti-Doping Organisations are required to publish at least annually (Article 14.4 of the Code) could be specified in more detail.

The EU and its Member States invite WADA to reflect on the role of WADA in the world anti-doping system, including in terms of WADA's own compliance to the Code.

5. WHISTLEBLOWERS

Whistleblowers make use of their right to freedom of expression, which is enshrined in the EU Charter of Fundamental Rights and in the European Convention on Human Rights.

The EU and its Member States fully support the objective of protecting whistleblowers against retaliation and encourages any efforts in that direction.

[The EU and its Member States could suggest specific provisions to be included in Article 22 of the Code on the involvement of governments with the aim of :

- putting in place clear channels for reporting to national anti-doping organisations and facilitate recourse to them through appropriate measures.
- ensuring protection of whistleblowers against retaliation of any form.]

6. ROLE OF NON-SIGNATORIES

It is recognised that some entities, such as the Regional Anti-Doping Organisations, the International Testing Agency and other service providers, are involved in the anti-doping system, without being Code Signatories and with more limited supervision than for Code Signatories. The EU and its Member States consider that the role of such entities and their obligations should be clarified in the Code, to ensure that all of the mentioned entities addressed by WADA are complying with the rules.
