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Subject: The role of public authorities in combating increased sophistication of doping in sport
- *Policy debate*

Following consultation of the Working Party on Sport, the Presidency has drawn up the attached discussion paper as the basis for the policy debate on the above subject at the EYCS Council meeting on 16-17 May 2013.

The role of public authorities in combating increased sophistication of doping in sport

Presidency discussion paper

Continued threat of doping in sport

While enormous strides have been made internationally in the fight against doping in sport, through the work of the World Anti-Doping Agency (WADA), recent high profile cases have shown that doping remains one of the major challenges facing the sport sector. The Lance Armstrong case, the Operation Puerto trial in Spain and the Australian Crime Commission investigation into organised crime and drugs highlight the continuing global threat of doping to the integrity of sport.

WADA continues to lead in the worldwide fight against doping in sport through a multi-national and multi-agency approach. The World-Anti-Doping Code is a very important framework for harmonised anti-doping policies, rules and regulations and recent developments such as the athlete biological passport are important tools in the on-going fight against doping.

The structure of WADA recognises that public authorities and the sport movement must act together to fight doping and that neither will be successful in the fight against doping without the collaboration of the other. This collaborative structure has worked very effectively since the establishment of WADA in 1999. However with more sophisticated methods of doping continually emerging and evidence of increased criminal infiltration in doping in sport, are there ways in which public authorities can be more effective in the fight against doping?

The importance of combating doping in sport and the challenges existing

Sport plays an important social, economic and health role in society and threats to the integrity of sport, such as doping, can have far-reaching consequences for these benefits. Cheating and corruption have no place in sport and undermine the fundamental principles of honesty and fair play.

Elite athletes are role models particularly for young people and their success in honest and fair competition can encourage participation and boost morale. While elite athletes who are found guilty of doping receive sanctions, they may have won significant sums of prize money during their careers and can continue to live off these proceeds which have been won dishonestly.

Doping not only compromises the principle of open and equal competition but also poses a serious threat to individual and public health and can have damaging long-term effects on people's health.

While there have been significant advancements in the testing tools to fight against doping, methods of cheating have also become more sophisticated and there is a need to be vigilant to new ways of doping emerging.

One of the current challenges in anti-doping work is in the control of supply and access to doping substances. There is evidence of a growing influence of criminality in sport, for example, through the trafficking of performance enhancing drugs.

Ministerial debate: What can public authorities do to combat the increased sophistication of doping in sport?

Protecting the integrity of sport against doping is an on-going global challenge which requires international and cross-sectoral cooperation and action. Public authorities, sports bodies and national anti-doping agencies need to continue to work together to fight this problem and ensure that there is a level playing field globally.

Public authorities have powers not available to the sport movement, for example, in areas of investigation and intelligence sharing. In recent years, WADA has taken the view that, to succeed in the fight against doping in sport, there is a need to move beyond drug-testing alone and develop additional ways of gathering, sharing and exploiting information and evidence about the supply to and use of prohibited substances and methods by athletes.

The Australian Federal Government recently introduced the Australian Sports Anti-Doping Authority Amendment Bill 2013¹ in response to recent high profile scandals and investigations. The purpose of the Bill is to strengthen the investigative functions of the Australian Sports Anti-Doping Authority (ASADA) and to enhance information sharing arrangements with other government agencies. The Bill proposes to provide ASADA with powers to compel persons of interest to cooperate with the Authority's investigations. While the Bill seeks to give ASADA the power to require a person to answer questions and provide information, it does not give ASADA the power to enter and search premises or seize evidential material even where there is a reasonable suspicion that an anti-doping rule violation has occurred. Under existing legislation, while ASADA itself does not possess powers of compulsion or of search and seizure, other public agencies are authorised to share information with it. For example, customs officials who seize illegal substances may forward to ASADA the details of the intended recipients. Some stakeholders have raised concerns about the nature and extent of powers to be given to ASADA under the new Bill including that they are an infringement of athletes' human rights.

¹ http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s902

At an EU level, it is the view of EU Athletes² that the current anti-doping system may impact on the rights of athletes. In the context of concerns expressed by WADA that the proposed EU Data Protection Regulation³ could undermine the current anti-doping system, EU Athletes welcome greater protection for the rights of athletes and oppose any exemptions of athletes from legal protections or fundamental rights. Athletes are currently obliged to give consent for the processing of their data. EU athletes and the Article 29 Data Protection Working Party⁴ maintain that this consent is neither free nor informed – thus they would argue that there may be an imbalance as referred to in Article 7(4) of the proposed Data Protection Regulation. EU athletes are also concerned about other aspects of the current anti-doping system, for instance, the ‘whereabouts’ rules which they believe present a serious infringement into the private and family life of athletes.

Any action taken by public authorities to combat the increased sophistication of doping in sport needs to strike a balance between the individual rights of athletes and the need to protect sport.

The central question for the Ministerial debate will be:

What practical actions can public authorities take to combat the increased sophistication of doping in sport while recognising the individual rights of athletes?

In order to ensure an interactive, free-flowing debate, the Presidency will be inviting **Mr Travis Tygart, Chief Executive of the United States' Anti-Doping Agency (USDA)** who will provide his unique insights and his perspectives on this issue.

² EU Athletes is a federation of independent player unions with thirty-five member unions representing over 25,000 top athletes in Europe.

³ Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (doc. 5853/13)

⁴ The Article 29 Data Protection Working Party was set up under the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. It has advisory status and acts independently.

In their interventions, Ministers should be guided both by the question set out above, and by the presentations of the external speaker. Ministers will be encouraged to intervene freely in response to the speaker, without scripted interventions, by asking questions or commenting. The Presidency will also invite the external speaker to respond to the debate as it unfolds, and reflect on points made by Ministers.

In order to give all Ministers an opportunity to contribute, interventions will be restricted to two minutes maximum.

The Presidency's aim is that Ministers leaves the discussion with one or two practical ideas which they can take back to their capitals for discussion.
