



Education and Culture DG



**EU CONFERENCE ON ANTI-DOPING
ATHENS, 13–15 MAY 2009**

**Background Paper
The EU and the fight against doping**

1. Historical and institutional context

The fight against doping is not a direct EU competence. Nevertheless, the Commission has been faced with calls for action from various sides over the years¹. Responsibilities are distributed unsystematically because sport is organised differently in different Member States, because the degree of autonomy of sport organisations is variable, because the problem tends to be defined differently and because bodies at several levels claim responsibility and authority: international, national, regional and local sports organisations, international governmental organisations, and public authorities in Member States at national, regional or local level. Action at EU level should complement that of other actors, but without changing the existing allocation of competences.

In Member States, doping may be regulated by national law, regional law, rules from private organisations or any combination of these. Some Member States have doping laws, others do not. The 1989 Anti-Doping Convention of the Council of Europe is the only piece of legislation at European level. The World Anti-Doping Agency (WADA), set up in 1999, is a private law body although half of its board members represent Governments. The 2005 UNESCO convention seeks to lend support to WADA and its Anti-Doping Code but does not include a framework for monitoring compliance. It does not specify whether signatory states must use legislation or other mechanisms to implement its objectives.

Doping has recurrently been on the EU agenda, which is reflected in numerous documents from all EU Institutions. The 1992 Olympics in Barcelona and Albertville led to the creation of a code of conduct. The 1998 Tour de France led to a Community Support Plan (COM (1999) 643)² which formed the basis for two years of pilot projects in the field of the fight against doping, co-financed by the Community. Important development work in the field of laboratory analysis was funded from the research budget under the now discontinued HARDOP and CAFDIS programmes³. Political cooperation

has included various meetings inside and outside of the EU, as well as regular contacts with the Council of Europe and UNESCO.

Doping made its entry into the case-law of the European Court of Justice with the Meca-Medina case. While the Court's sport-related case law has since 1974 become quite voluminous, Meca-Medina is so far the only judgement specifically concerned with anti-doping⁴. The case led to the formulation of important principles that anti-doping work should respect, in particular the proportionality of measures taken, and has thereby pointed to the potential relevance of EU law for anti-doping structures and rules.

The single most important Commission initiative in the field of sport was taken in 2007 with the adoption of the Commission's White Paper on Sport (COM (2007) 391). Section 2.2 of the White Paper covers the fight against doping; the text of this section is reproduced below (Annex). The White Paper received strong support from the European Parliament⁵, the Economic and Social Committee and the Committee of the Regions. In the field of doping, it has led i.a. to the creation of an EU Working Group on Anti-Doping in 2008. The Commission is aware of the fact that the European Parliament has identified many areas where action might be desirable, but it is keen to ensure that its initiatives fully respect the current legal and institutional framework and that initiatives launched by the Commission are feasible in relation to the Commission's limited resources.

As an observer in the Council of Europe's anti-doping structures, the Commission has continuously taken stock of the situation and sought to define its own role. Whenever major issues appear to be governed by relevant EU legislation, it is the Commission's duty, in its role as Guardian of the Treaties, to get involved as appropriate. However, the need to get involved and the limits of involvement must be continuously reappraised on a case-by-case basis. The creation of an EU Working

¹ Including the European Parliament in its Resolution on Combating Doping in Sport, 14 April 2005. OJ C 33, E/590, 2006.

² December 1999 – Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions (COM (1999) 643): Communication from Mrs Reding in agreement with Mr Byrne: Community Support Plan to Combat Doping in Sport.

³ HARDOP: Harmonisation of methods and measurements in the fight against doping (1998-9); CAFDIS: Concerted action in the fight against doping in sport (1998-9).

⁴ Court of First Instance (T-313/02), judgement of 30.09.2004; European Court of Justice (C-519/04), judgement of 18.07.2006 (<http://curia.europa.eu/>)

⁵ European Parliament Resolution of 14 April 2008 on the Report on the White Paper on Sport. Rapporteur M. Mavrommatis.

Group on Anti-Doping by Member State Sport Directors in Brdo, Slovenia, in February 2008 has provided the Commission with a major source of information and support in this endeavour. The creation of an ad-hoc group to follow outstanding data protection issues in the anti-doping area, decided by Sport Directors in Prague in April 2009, can be seen as an endorsement of this flexible and pragmatic working method.

The entry into force of the Treaty of Lisbon, which is still under ratification in a few Member States, will give EU Institutions an explicit mandate to take action in the field of sport. In particular, it is expected that formal

sessions on sport will be introduced at the EU Council of Ministers and that the Commission will propose a sport programme to the Council and the European Parliament. Although the revised Article 165 (currently 149) of the Treaty will provide an explicit competence for sport, it will specifically exclude any harmonisation of national laws in this area. A possible future EU sport programme may, in principle, include a component on the fight against doping. Against the backdrop of these possible developments, the Commission is in the process of reassessing its past and present work with an eye to its possible future involvement in the fight against doping.

2. The rationale of the conference

In view of the situation described above, the Commission is carefully listening to all sport-related stakeholders to have clear ideas about their expectations – an approach which echoes the philosophy of the consultation process, “The EU and Sport – Matching Expectations”, which was conducted in 2005-2007 and paved the way for the adoption of the White Paper on Sport. In the field of sport, the principle of subsidiarity will always be of particular importance.

The European Parliament plays a particularly important role in this context. In anticipation of the entry into force of the Lisbon Treaty, the Parliament approved the insertion of a Preparatory Action in the field of sport (i.e. a limited budget line) in December 2008. Pursuant to EU budgetary provisions, preparatory actions can be seen as mini-programmes which may be adopted and implemented in anticipation of the possible design and adoption of future EU programmes. Thus, the Preparatory Action in the field of sport can be seen as an embryonic future sport programme.

Following a proposal from Mr Manolis Mavrommatis, MEP, Vice-Chairman of the Parliament’s Culture Committee (in whose remit sport falls) and rapporteur for the Parliament’s Report on the White Paper on Sport, the Commission decided to organise an EU Conference on Anti-Doping in Athens, financed from the 2009 Preparatory Action. The timing is favourable in the sense that some of the topics included in the conference programme are currently under discussion in other anti-doping fora as well, so that the conference may provide EU-specific input to currently on-going debates.

The Commission has intended to make this conference both inclusive and operational. Therefore, Sport Directors and Sport Ministers of Member States were invited, as were national anti-doping organisations (NADOs), accredited laboratories in Member States, the Council of Europe, the World Anti-Doping Agency (WADA), trade unions and some sport academics. Sport organisations were invited on a more selective basis, taking into account the size of their involvement in anti-doping work and recognition in anti-doping structures.

The Commission remains committed to the idea that all stakeholders – including EU Institutions, Member State Governments, sport organisations and athletes’ trade unions – should have a say in the discussions. For this reason, no presentations have been foreseen in the three workshops. Each workshop will be introduced in the preceding plenary session, thereby allowing delegates to make an informed choice regarding which workshop to attend. In the workshops, all participants are encouraged to take the floor.

3. The three workshops

The three workshops have been designed to offer a framework for relevant, practice-based discussions on three topics which are currently being debated widely at European and worldwide levels.

Workshop on Data Protection: One workshop will deal with data protection issues in relation to relevant EU legislation and the recent discussions and developments in this area. The Commission hopes that the workshop will function like a seminar where the anti-doping specialists of Member States and sport organisations can get to understand the practical implications of the issue better. The Commission is aware of the fact that recent discussions, which have been reported widely in the press and media, have had a tendency to remain at a rather abstract level, so that many pieces of news were not instantly understandable to anti-doping staff, athletes and the general public. There is thus a need to make complex matters easier to understand from a practical point of view. There is also a need for building bridges between anti-doping specialists and data protection specialists, as indeed compliance with the relevant rules is monitored by Member States' national data protection authorities.

In the plenary session, the issue will be introduced first by a prominent member of the anti-doping community and second by a data protection expert from the Commission. In the workshop, the same data protection expert will act as rapporteur, while the majority of participants are likely to come from the anti-doping community, so that the anti-doping experts' experiences from practice and their concerns regarding the need to strike the right balance between the objectives of anti-doping work and fundamental rights will be heard.

Workshop on Cooperation with the Pharmaceutical Industry: Another workshop will deal with the need and possibilities for cooperation between anti-doping structures and the pharmaceutical industry. The topic will be introduced in the plenary session by the Government of France, where cooperation of this type has already been a reality for some time. The discussion will focus on the possibilities to extend this type of cooperation to the European level.

While the Commission cannot be part of such a scheme itself, it is happy to facilitate a discussion which might lead to the creation of new partnerships, especially if industry representatives join the discussion. Participants interested in this topic might join the workshop either because they wish to follow the debate more generally, or because they would like to be part of a future partnership of this type. If after this conference, a number of Member States entered into a new partnership with a number of organisations from the private sector, the Commission would regard this as a success story.

Laboratory Workshop: The last workshop will offer delegates from WADA-accredited laboratories located in the EU an opportunity to discuss issues of common interest. A formalised laboratory network at EU level was proposed in the White Paper on Sport but could not until now become a reality. The Commission is happy to offer accredited laboratories and other interested delegates this opportunity for an exchange of information and opinions in an EU framework.

The Commission is aware of the fact that no EU forum for accredited laboratories exists at present, while it recognises the utility of the relevant pan-European and worldwide fora. The importance of Europe's contribution to the worldwide fight against doping becomes particularly obvious when looking at the distribution of accredited laboratories by continents. Currently, 44% of these laboratories are located in the EU and another 6% in non-EU members of the European Economic Area (EEA).

The topic will be introduced by the deputy head of a WADA-accredited laboratory located in the EU, while the head of the laboratory of the host country will be the rapporteur in the workshop.

Annex:

Extract from the White Paper on Sport

2.2 Joining forces in the fight against doping

Doping poses a threat to sport worldwide, including European sports. It undermines the principle of open and fair competition. It is a demotivating factor for sport in general and puts the professional under unreasonable pressure. It seriously affects the image of sport and poses a serious threat to individual health. At European level, the fight against doping must take into account both a law-enforcement and a health and prevention dimension.

(4) Partnerships could be developed between Member State law enforcement agencies (border guards, national and local police, customs etc.), laboratories accredited by the World Anti Doping Agency (WADA) and INTERPOL to exchange information about new doping substances and practices in a timely manner and in a secure environment. The EU could support such efforts through training courses and networking between training centres for law enforcement officers.

The Commission recommends that trade in illicit doping substances be treated in the same manner as trade in illicit drugs throughout the EU.

The Commission calls on all actors with a responsibility for public health to take the health-hazard aspects of doping into account. It calls on sport organisations to develop rules of good practice to ensure that young sportsmen and sportswomen are better informed and educated of doping substances, prescription medicines which may contain them, and their health implications.

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 practice 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.

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

