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Conference of Parties to the International Convention against Doping in Sport

2CP

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Item 5.2 of the Provisional Agenda

Reports of States Parties on Measures Taken by Them for the Purpose of Complying with the International Convention against Doping in Sport

Summary

Documents: International Convention against Doping in Sport.

Background: This document discusses several issues pertinent to the monitoring of the International Convention against Doping in Sport. An important clarification is made with respect to the references to the World Anti-Doping Code in the Convention. References to the Code should be interpreted to mean the latest version of the Code in force. The remainder of the report highlights two measures to improve the monitoring framework. Ensuring that territories to which the Convention applies submit information about the actions they have taken to ensure compliance with the Convention would be a positive step. The Conference of Parties is also invited to consider the complete harmonization of the systems used to monitor the Convention and the Code which would allow for the production of a global report on anti-doping every two years.

Decision Required: Paragraph 18

INTRODUCTION

1. Considerable attention has been given to the development of the monitoring system for the International Convention against Doping in Sport (hereinafter referred to as “the Convention”). This item was discussed at the First Session of the Conference of Parties where a decision was made to adopt a simple but cost-effective questionnaire; however, the delivery mechanism could not be determined at that time. In accordance with Resolution 1CP/6, the Director-General of UNESCO subsequently wrote to all States Parties to present the options to monitor compliance with the Convention. Two options were proposed in a detailed report [ICDS/1CP/Doc.10 refers] either: (1) a paper-based questionnaire; or (2) a computer-based tool, *Anti-Doping Logic*. The unanimous response of States Parties was in support of the *Anti-Doping Logic* system. In 2009, the Secretariat circulated a second report which outlined the progress made with the development of the *Anti-Doping Logic* system. States Parties were also consulted on the questionnaire which would be used to determine their compliance with the Convention.

2. The results generated by the *Anti-Doping Logic* tool will be discussed under item 5.1 of the agenda for the Second Session of the Conference of Parties. However, it is important that these deliberations are informed by one point of clarification relating to the World Anti-Doping Code (hereinafter referred to as “the Code”). This issue is discussed in detail below. The remainder of this report looks at options to refine the monitoring system for the Convention. Resolution 1CP/6 required the Secretariat to prepare a report for the next ordinary session of the Conference of Parties on measures to improve the monitoring framework.

REFERENCES IN THE CONVENTION TO THE WORLD ANTI-DOPING CODE

3. It is essential to provide clarification about the definition of, and references to, the Code in the Convention prior to any discussion about the compliance measures taken by States Parties. Since the Convention was adopted on 19 October 2005, and entered into force on 1 February 2007, the World Anti-Doping Agency (WADA) has amended the Code. The revised version of the Code entered into force on 1 January 2009. It is important, therefore, to clarify the legal significance, if any, of these changes.

4. There is a discrepancy between the definition of the Code in the Convention and the version of the Code which is currently being applied by anti-doping organizations around the world. Article 2.6 of the Convention states: “Code’ means the World Anti-Doping Code adopted by the World Anti-Doping Agency on 5 March 2003 at Copenhagen which is attached as Appendix 1 to this Convention.” However, it is important to emphasize that this inconsistency in the definition of the Code does not have any legal implications for States Parties. Article 4.2 of the Convention clearly states that the Code is an Appendix to the Convention and does not create any binding obligations under international law for States Parties.¹ Nevertheless, there are a number of Articles in the Convention which make reference to the Code.² For example, under Article 11(c) States Parties should, where appropriate, withhold financial or sport-related support from sports organizations that do not comply with the Code. This situation has the potential to create confusion.

5. In the view of the Secretariat these references to the Code should be interpreted to mean not only the text of the Code as adopted on 5 March 2003, but also as subsequently amended, each process of modification leading to a new version of the Code.

¹ Article 4.2: “The Code and the most current version of Appendices 2 and 3 are reproduced for information purposes and are not an integral part of this Convention. The Appendices as such do not create any binding obligations under international law for States Parties.”

² Articles: 3(a); 11(c); 12(a); 16(a); 16(f); 16(g); 19.2(b); 20; 27(a); 27(b); and 30.1(i).

6. There are three critical factors which have informed this interpretation. Firstly, amendment of the Code was expected at some point in time. In this regard, Article 23.6 of the 2003 Code allows for its amendment and sets forth the process for modifications to be made. Secondly, the intergovernmental meeting of experts which drafted the Convention anticipated the amendment of the Code. During the third session of this meeting which took place at UNESCO Headquarters from 10 to 14 January 2005, the amendment of the Code was considered in detail during the debate on Article 2 of the Convention. It was emphasized that the Convention should allow for modifications being made to the Code without impacting on the obligations of States Parties or its implementation. The third decisive observation was the fact that the First Session of the Conference of Parties was fully informed about the process of amending the Code. Under Agenda Item 4, the Report of the World Anti-Doping Agency on the implementation of the World Anti-Doping Code, the Director-General of WADA, Mr David Howman, provided comprehensive information on the review process being undertaken.³ The Conference of Parties was informed that three consultation phases would be carried out with all stakeholders prior to the adoption of any amendments by the WADA Foundation Board during the 3rd World Conference on Doping in Sport. Mr Howman also outlined the changes which were under consideration. Accordingly, the Conference of Parties is deemed to have been made fully aware, and given tacit approval, that the Code would be amended.

7. The amendments to the 2003 Code were unanimously adopted by the WADA Foundation Board and endorsed on 17 November 2007 by the 3rd World Conference on Doping in Sport, hosted in Madrid (Spain). These amendments, which constitute the new version of the Code ("2009 Code"), entered into force after 1 January 2009.

8. However, in order to provide absolute certainty on this matter, it is recommended that the Conference of Parties adopts a resolution which clearly states that for all intents and purposes all references made to the Code in the Convention refer to its latest version in force. The Conference of Parties, as the sovereign body of the Convention, is able to make such a legal interpretation. Such a resolution would remove any doubt and provide legal protection for all stakeholders.

REFINEMENT OF THE MONITORING SYSTEM

9. During its First Session, the Conference of Parties requested a detailed report on measures to improve the monitoring framework for the Convention. In this regard, the Secretariat has identified two areas where system refinements could be made. The first proposal concerns the possible extension of the monitoring system to include the territories of certain States Parties, some of which are Observers to UNESCO. The second option is to ensure the total harmonization of the monitoring system for the Convention and the Code by working in partnership with WADA and other interested parties. Other possible changes arising from the analysis of the responses provided using the Anti-Doping Logic system may be presented during the discussion of this item.

Territorial Extension

10. The Conference of Parties is advised to consider the enlargement of the monitoring system to include all of the territories to which the Convention applies. Only States Parties are required to forward every two years to the Conference of Parties, in one of the official languages of UNESCO, all relevant information concerning the measures taken by them for the purpose of complying with the provisions of the Convention.

11. UNESCO has received notification from three States Parties declaring that they have extended the application of the Convention to specific territories for whose international relations they are responsible, in accordance with Article 38 of the Convention.⁴ There are 10 territories to

³ This discussion is outlined in the Final Report of the first session of the Conference of Parties [ICDS/1CP/Doc.9 refers].

⁴ China, the Netherlands and the United Kingdom of Great Britain and Northern Ireland.

which the Convention now applies and it would be useful to have information about how they have met the obligations set forth. In the interests of ensuring the broadest application of the Convention, it is recommended that the *Anti-Doping Logic* system is amended to include a reporting mechanism for these territories.

12. Arguably such a decision would be consistent with the tenor of the discussions during the development of the Convention. The issue of territories was discussed during the second and third sessions of the intergovernmental meeting of experts which drafted the Convention. During the debate on this item some experts suggested that a specific article on territories could be used to limit the application of the Convention, while others noted that such a provision would allow the Convention to be extended to areas that would not otherwise be covered. However, despite initial divergence of opinion about the utility of including a specific article concerning territories, there was general agreement that no parts of the globe should be excluded from the application of the Convention. The collection of data, and by implication the active engagement of territories in the implementation of the Convention, accords with this position.

Harmonization with WADA

13. UNESCO and WADA have had several discussions about ways to fully maximize the synergies between the reporting arrangements under the Code and the Convention. The development of the *Anti-Doping Logic* system by UNESCO provides an opportunity to take a long-term view and to consider the logistical implications of greater data alignment. One option would be to produce a single report on the world anti-doping situation which includes data from both governments and the sporting movement. There could be significant benefits of having a single reference document which presents accurate and up-to-date information on the state of global anti-doping efforts across all countries and across all sports. UNESCO and WADA, as well as the Council of Europe which monitors the Anti-Doping Convention 1989, appear amenable to this approach.

14. If the Conference of Parties was in favour of unifying the monitoring systems for the Convention and the Code, several practical issues would need to be resolved. The timing of the production of a global report, compatibility of existing monitoring tools and the approval mechanisms for such a document would all need to be determined. It is important to note that the reporting time frames for the Convention are set forth under Article 31. States Parties are required to report every two years on the measures taken by them for the purposes of complying with the Convention. Moreover, this reporting has been timed to coincide with the Conference of Parties which meets in ordinary session every two years. Thus, the first global report could be produced in 2011 provided that the WADA Foundation Board agrees to conduct monitoring of the Code at the same time.

15. Issues of compatibility between WADA and UNESCO systems should be easy to resolve given similarities between the electronic tools developed. A comprehensive mapping exercise of all appropriate information to include in the report and the development of a series of interrelated questionnaires to gather the data from all stakeholders would be required. However, it is important to emphasize that there will be costs associated with the above analysis and software development. This is an important consideration given that US \$80,000 has already been spent on the development of the *Anti-Doping Logic* system. It is difficult to determine the expenditure required to develop the harmonized system; however, it will likely be comparable to the sums expended to date.

16. Finally, clear governance structures would need to be put in place for the approval of a global report. It is clear that the overall responsibility for monitoring compliance with the Code and Convention rests with the WADA Foundation Board and the Conference of Parties respectively. Thus it will be important to gain the approval of both bodies to use the compliance data to compile the global report. It might also be necessary to submit a draft report to both bodies for approval.

17. The Secretariat is very supportive of the production of a global report on the fight against doping in sport. Such a document would present a comprehensive picture of the actions being undertaken by governments and the sporting movement and would further enhance the partnership between these two essential stakeholders. Moreover, it is expected that any practical issues could easily be overcome by a formal partnership between UNESCO and WADA to produce the global report. This could be managed by an amendment to the existing Memorandum of Understanding between the two organizations.

DRAFT RESOLUTION 2CP/5.2

18. The Conference of Parties may wish to adopt the following resolution:

The Conference of Parties,

1. *Having examined* document ICDS/2CP/Doc.7,
2. *Welcomes* the development of the *Anti-Doping Logic* system to monitor compliance with the International Convention against Doping in Sport;
3. *Determines* that, for all intents and purposes, all references made to the World Anti-Doping Code in the International Convention against Doping in Sport should be interpreted to mean the latest version of the Code in force;
4. *Requests* the Secretariat to amend the *Anti-Doping Logic* system in order to include the reports on all of the measures for the purpose of complying with the provisions of the Convention taken by the territories referred to in Article 38 of the Convention;
5. *Recommends* the development of a comprehensive global report on the fight against doping in sport, which incorporates data from both governments and the sporting movement;
6. *Requests* the Secretariat to enter into discussions with the World Anti-Doping Agency on options for harmonizing the monitoring systems for the International Convention against Doping in Sport and the World Anti-Doping Code.