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FEEDBACK REPORT ON THE ANTI-DOPING POLICY ADVICE PROJECT

SUMMARY

Document: International Convention against Doping in Sport.

Background: In its Resolution 4CP/6, at its fourth session, the Conference of Parties approved the creation of an anti-doping policy advice project, in order to improve the quality of the applications to the Fund for the Elimination of Doping in Sport.

The present document contains the feedback report on the anti-doping in sport policy advice project. The report summarizes the independent work carried out by seven national consultants, supervised and coordinated by an international consultant. Their task was to carry out an evaluation of the national anti-doping policies of seven States Parties,* including their legal provisions and their means of implementing the objectives of the Convention.

It also contains proposals and recommendations for the consideration of the Conference of Parties.

Decision required: Paragraph 24.

* Brazil, France, Jamaica, Kenya, Romania, Saudi Arabia and Spain.

INTRODUCTORY NOTE AND SUMMARY

1. In its Resolution 4CP/6, the Conference of Parties to the International Convention against Doping in Sport decided to initiate an assessment of public policies implemented by a panel of seven States which have ratified the International Convention against Doping in Sport, to analyse any difficulties or disparities in implementing the Convention and efficiently mobilizing, in support of policies currently being implemented, the Fund for the Elimination of Doping in Sport.
2. The seven States were chosen following an analysis of their conformity to the Convention in relation to the data contained in ADLogic, taking into account the difficulties they had faced or their national anti-doping situation. Geographical distribution was also taken into consideration when making the decision.
3. The Secretariat redefined the parameters of the anti-doping policy advice project in relation to the initial approach presented in document ICDS/4CP/Doc.6 (2013). The new methodological approach was therefore oriented towards the key strategic domains necessary for providing support to the States Parties in carrying out their obligations, as public authorities, in the framework of the Convention. As a consequence, the following main strategic domains were included in the aims of the consultants:
 - (i) to determine the nature and status of national anti-doping standards and to examine them in comparison with the objectives of the Convention, drawing lessons from them in terms of their conformity, to allow the States Parties to concentrate on the shortcomings and deficiencies in effectively reaching the objectives set by the Convention;
 - (ii) to evaluate the nature and status of the political principles and platforms governing the national anti-doping system, practices and regime in comparison with the UNESCO Convention and the World Anti-Doping Agency (WADA) Code;
 - (iii) to evaluate the resources and means of anti-doping support available in carrying out these actions.
4. This new approach by the Secretariat aims to capitalize on the results of the assessment carried out by the consultants in order to increase the capacity of the States Parties to fulfil their obligations in terms of the objectives of the Convention, and to help respond to the main challenges in the fight against doping. This strategic orientation should lead to the building of a common framework which would help to support public authorities in the key areas which require reform.
5. The inventory and monographic analysis work on the standards decreed, institutions created and policies pursued in each of the countries covered in this study, as well as the means employed, was entrusted to national consultants, and an international consultant¹ was responsible for coordinating the project and drawing up a summary of the studies conducted, in order to formulate certain recommendations, as well as ensuring the harmonization of the national consultants' work.
6. An evaluation grid was given to them by the international consultant to standardize the monographic analyses as far as possible. In addition to this factual monographic analysis, the national consultants were requested to assess the effectiveness and efficiency of the policies pursued, also using shared evaluation grid.

¹ See the Annex for the profiles of the consultants.

7. To promote a multidisciplinary approach, each national consultant set up a consultative committee comprising legal and scientific experts, athletes, anti-doping psychologists or practitioners, taking account of the penal aspect.
8. Three stages enabled the work methodologies of the national consultants to be brought together: mission initiation reports, interim reports (mainly descriptive) and final assessment reports. Discussions between national consultants throughout the process, monitored by the international consultant, allowed difficulties encountered to be shared and analysed, although no physical meetings between the teams were funded.
9. The reports of the national consultants can be referred to on UNESCO's website.² They are therefore an indivisible part of this report, which only partially summarizes their content for the purposes of synthesis recommendations. The significant differences between the contributions of the national consultants express for the most part the very considerable divergence of national situations regarding the cultural, legal, political and economic context for the strategies put in place.
10. The first significant observation to be made is the shift and broadening in the aims and prospects of the fight against doping in all these countries, more particularly those which have the greatest resources in terms of public funding. The fight against doping in sport has, for the main part, concentrated initially on competitive practice; it was subsequent to and in the context of doping scandals revealed during important sports competitions that the International Convention against Doping in Sport came into being.
11. Public polices and national legislation, when they are global (for example Spain, France and Romania) have increasingly pursued the aims of public health, education and public order, which are not restricted to the involvement of States Parties in strengthening the effectiveness of "sports discipline".
12. The International Convention against Doping in Sport (in the body of the Convention, not including annexes and appendices) to a great extent contributed to the understanding of these new objectives that fall fully within the competency of the States Parties.
13. However, paradoxically, the less specific and restrictive nature of these articles with regard to the precision of the annexes and appendices, which mostly fall under "sports discipline", had dual consequences which the reports of the national consultants illustrate: a huge divergence between the policies pursued, lack of coordination of the same type as that assumed by the WADA concerning "sports discipline" and a very significant inequality among the States according to the means and flexibility of public funding at their disposal. This observation is behind the recommendations for a greater coordination of the public policies likely to be implemented by UNESCO, the distribution of methodological guides relying on the best practices observed and, in the medium term, the reinforcement of the compulsory nature of the conventional provisions for the States Parties on the one hand, and on the other, the mobilization of the Fund for the Elimination of Doping in Sport to support States that do not have the financial means to implement such public policies, especially educational ones.
14. The second observation, equally important, is the unanimously reported lack of benchmark epidemiological studies on the effects of doping in sport or on the effectiveness of implemented public policies. The scientific studies conducted have focused on techniques for detecting products and chemicals with doping effects analysed in competitive practice. This observation, which is made in the reports summarized here, is particularly worrying.
15. The report emphasizes that public health policies can, surprisingly, be implemented without being guided by prior scientific studies. Here it is not simply a case of compliance with sporting rules. No scientific framework analysing the effectiveness of public policies has been

²

<http://www.unesco.org/new/en/social-and-human-sciences/themes/anti-doping/conference-of-parties/fifth-session/>

pursued and applied concerning public policies of any kind whatsoever. The statistical data available are purely factual and do not serve as effectiveness indicators. This is true of a number of doping checks and their results. It is therefore difficult to assess whether they reveal an increase in doping practices or a greater effectiveness of the checks and analyses.

16. Thus, public policies to combat doping are mostly pursued “blindly” and, contrary to the initial objectives of the study undertaken by the Conference of Parties, this has not brought about a “comparative assessment of the public policies”. As a result, despite the human and scientific wealth of multidisciplinary groups set up in each country, none of them could carry out such an assessment. The recommendation for action by UNESCO in this area that we should design and apply a common framework to assess the effectiveness and impact of public policies in combating doping in the States Parties resulted from this observation. Likewise, with regard to public health policies, incentives to carry out comparative epidemiological studies are needed. For the most part, far from drugs and narcotic products, doping involves the misuse of products and chemicals that exist legally for therapeutic purposes.
17. The third observation is the growing difficulty of States Parties, both concerning the management of procedure deadlines and the possible contradictions between the new principles of the modified Code and their own legal constraints of a constitutional or conventional nature (in particular, for example, the European Convention on Human Rights), in applying to internal law the principles (and in fact also the provisions) of the World Anti-Doping Code to which they are committed.
18. It should be noted that the 2003 World Code that features in the Appendix of the 2005 Convention was the subject of several modifications, the last of which is substantial.
19. We can ponder the nature of the normative powers exercised de facto by WADA, using a Code whose principles the States undertook by treaty to respect and the real legal obligations of the States, which may consider that they are bound only by the principles of the version of the Code that features in the Appendix of the Convention at the time of its adoption.³ We can also question the prior legal methods of consultation to avoid the pitfalls of transposition. This observation, made clearly by the Spanish, French and Romanian consultants, calls for a reinforcement of legal consultation, through UNESCO, between the services of WADA and the States Parties, or indeed the establishment of a mechanism to modify the Code in the longer term, placing UNESCO legally in charge of applying the Convention. This process of incorporation into the internal law of the States Parties of the “principles” of the World Anti-Doping Code, whose main purpose is sports discipline, is currently encountering significant implementation difficulties.
20. The contributions of the national consultants show a real and significant desire by the States Parties to pursue public policies to combat doping. The global nature of such policies is impeded by the lack of financial flexibility for some of them, forced to fall back on mere sporting discipline. This is the case with Kenya, for example, which has created its national agency (ONAD). This priority decision may lead to a debate.
21. The legal problems that stem from reconciling the Convention and the distinctive nature of the World Anti-Doping Code Appendix have not been overcome.
22. Lastly, and this element has significantly influenced the contributions of both national and international consultants, the lack of scientific studies allowing the policies pursued by the States Parties to be objectively assessed is significant.

³ The Secretariat wishes to emphasize that this consideration comes under Resolution 2CP/5.2 in which the Conference of Parties “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”.

23. In view of the accomplishment of these missions consolidated by the international consultant, the main recommendations set out in the present report (see the complete document in Annex I) all have the aim of reinforcing the implementation and monitoring of the Convention, as well as reinforcing the assistance provided by UNESCO to States Parties.

Draft RESOLUTION 5CP/10

24. The Conference of Parties,

Having examined document ICDS/5CP/Doc.10,

Takes note of the recommendations put forward in the final report resulting from the analyses carried out by the group of consultants on anti-doping policy advice;

Thanks the group of consultants and the Secretariat for carrying out the project and the relevance of the analyses provided as well as the proposed approach;

Takes good note of the proposed results as well as the proposals formulated in the final report of the group of consultants;

Approves the allocation of resources from the Fund for the Elimination of Doping in Sport to enable the monitoring of the recommendations contained in the feedback report on the anti-doping policy advice project;

Requests the Secretariat to submit a report on the follow-up of this Resolution at its sixth session.

ANNEX I

ASSESSMENT OF PUBLIC POLICIES OF SEVEN SIGNATORY STATES IN VIEW OF THE IMPLEMENTATION AND MONITORING OF THE OBJECTIVES OF THE UNESCO INTERNATIONAL CONVENTION AGAINST DOPING IN SPORT

FINAL REPORT

The ideas and opinions expressed in this publication are those of the authors; they do not necessarily reflect the views of UNESCO and do not commit the Organization in any way.

On the occasion of its fourth session on 19 and 20 September 2013 in Paris, the Conference of Parties to the International Convention against Doping in Sport (hereinafter “the Convention”) decided to initiate a process of assessment of policies for preventing and combating doping in sport, to be conducted by States Parties.

This phase constitutes a mandatory examination prior to the formulation of advice and recommendations, in order to improve the effectiveness of anti-doping public policies.

Seven States Parties were selected for this review: Brazil, France, Jamaica, Kenya, Romania, Saudi Arabia, and Spain. A national consultant, as well as a multidisciplinary team, was appointed in each of the seven countries forming the object of this first study. These consultants⁴ were appointed in view of their competence and experience in the anti-doping area.

- In Brazil, the designated national consultant is Dr Fernando Marinho Mezzadri;
- In France, the designated national consultant is Mr Rhadamès Killy;
- In Jamaica, the designated national consultant is Professor Trevor Munroe;
- In Kenya, the designated national consultant is Dr Vincent Onywera;
- In Romania, the designated national consultant is Dr Graziela-Elena Vajjala;
- In Saudi Arabia, the designated national consultant is Dr Mohammed Al Ghobain; and
- In Spain, the designated national consultant is Ms Theresa Zabell Lucas;

The choice of these seven countries⁵ was determined by the heterogeneity of their anti-doping regimes, but also by contextual elements linked to recent doping issues, by the adoption of recent texts regarding the fight against doping or also, by the hosting and organization by Brazil of the Olympic Games.

Each designated national consultant drew on a multidisciplinary team for the drafting of the various reports. It was indeed essential for the reports to consider the legal, sociological and political aspects of doping. Each multidisciplinary team was obliged to draw up a status report on national resources for combating doping, evaluate the reality of the application of the obligations arising from the Convention and on this basis, to assess the effectiveness of the policies and resources

⁴ The profile of the aforementioned selected consultants includes a researcher (Kenya), a Professor of Law, expert in transparency and integrity (Jamaica), the President of a National Anti-Doping Agency which supervises the implementation of national anti-doping measures and a control laboratory (Romania), a former Member of Parliament, Olympic Champion and policy-maker (Spain), a doctor specializing in anti-doping (Saudi Arabia) and lawyers (France). These diverse profiles, skills and areas of expertise, as well as consideration of gender and a decisive need for independence and credibility in the delivery of results, were key indicators which lead to their selection.

⁵ In line with the basic criteria defined by UNESCO for the choices made in the context of the present project.

deployed for combating doping. Lastly, the national consultants were asked to propose recommendations for improving the effectiveness of mechanisms for combating doping.

Each national consultant provided:

- A launch report regarding the understanding of the mission;
- An intermediate report, consisting of the description of each national anti-doping regime (legal framework, institutions involved, policies implemented, available resources, etc.), as well as an analysis of the application of the Convention, its annexes and appendices and any application difficulties;
- A final report, consisting of an analysis of policies implemented regarding the objectives of the Convention, a qualitative and quantitative assessment of these policies, the identification of difficulties and recommendations.

The final report was to comprise a genuine critical assessment and not a descriptive report, to permit an understanding of the difficulties of applying the Convention, as well as of implementing efficient and effective policies.

The role of the international consultant was to coordinate the mission of the national consultants and to draw up a summary of the studies conducted, in order to formulate certain recommendations which should nevertheless be considered as partial, in view of the limited size of the panel of States concerned by this study. The international consultant ensured the harmonization of the methods of the national consultants.

All “inception reports” were submitted by the national consultants during November 2014, the intermediate reports were submitted in April 2015 and the final reports at the end of August 2015. For his part, the international consultant submitted his launch report in November 2014 and his intermediate report in April 2015.

This final report of the international consultant aims to identify, from the synthesis of national reports, the difficulties in implementing the Convention, its annexes and appendices, by adhering States, as well as to present the recommendations for improving public anti-doping policies.

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THE FIGHT AGAINST DOPING IN SPORT: BETWEEN INDEPENDENCE AND COMPLEMENTARITY OF ACTION OF SPORTS AUTHORITIES AND PUBLIC AUTHORITIES

0.1 A preliminary observation in the form of a paradox.

The adoption by the UNESCO General Conference of the International Convention against Doping in Sport of 19 October 2005 is part of a long process, marked by a succession of sporting, political and media crises, which has led to an awareness of differentiated sporting, social and political challenges with regard to public policies relating to doping.

The fight against doping was initially restricted to combating enhancements of athletes in competition which were “artificial” and as such increasingly prohibited. All in all, doping appeared to be integrally linked to competitive sport, where it was an abuse. A second characteristic was the likening of doping to the use of products and substances which thus improved performance and created the conditions for unfair competition. Under these conditions, doping arose as a breach of the rules of the game, the enactment and sanctioning of which fell very naturally and exclusively under the control of the “sporting authorities”. Thus, the first anti-doping regulations arose in 1928 in the form of a rule stipulated by the International Association of Athletics Federations (IAAF), which prohibited the consumption of certain stimulants.⁶ The fight against doping thus arose at the heart of the private sporting legal order and the two key elements limiting its scope were sporting competitions and the taking of substances for the purpose of unfair enhancement of performance.

The initial conditions of those first anti-doping regulations at the heart of sports regulations continue to inspire the nature and objectives of the policies imposed to a great extent and, even if the aims are still the same, it became evident rather quickly that the sporting authorities required the supplementary action of the public authorities in order to increase efficiency.

The objectives of the fight against doping evolved progressively, but not all the legal and organizational conclusions have been drawn.

The assessment of the policies implemented by the seven countries forming the object of this study, as described by the national consultants, bears witness to this ambiguity.

Concern for protecting the athlete’s health, a public health issue, emerged gradually, in parallel with the need to ensure fairness in sporting competitions. It is interesting to note the coincidence of the expression of this concern (e.g. the European symposium at Uriage-les-Bains 1963 – “products artificially increase performances and are likely to be harmful to health”⁷) and the adoption of the first French, Irish, Italian and Turkish national legislation.

The fight against doping subsequently concentrated, at least as a claimed objective, on a broader population than elite athletes and competitors to include amateur athletes, athletes within the context of leisure activities and those practising sport outside of sports facilities. The assessment of the policies actually implemented in the countries studied bears witness to the difficulties encountered in this field. It is interesting to note that the enlargement of the target population deprived the sports movement of its capacity for acting alone. The protection of the health of practitioners, outside competition but also outside the framework of sporting federations, falls under the jurisdiction of the public authorities. However, the fight against doping with respect to this broader population is a poor relation to the process described from the perspective both of legal constraints and of the effectiveness of the policies.

The role currently played by sporting events in setting an example to people and encouraging sporting activity has led States to take an interest in the integrity, as such, of sports competitions,

⁶ Website of the World Anti-Doping Association: Brief history of anti-doping.

⁷ European symposium of Uriage-les-Bains, 26 and 27 January 1963.

alongside the sporting movement.⁸ No educational and social policy can be built on the foundation of sport if its supreme value, honesty in observing the rules, is not guaranteed. At the same time, the financial stakes involved make cheating in sport a kind of financial fraud. In this way, it becomes legitimate for the public authorities, as well as the sporting authorities, to take an interest in the fight against doping, aside from the public health concerns.

The misuse of medical products for the purposes of doping and associated rackets also mobilizes means of fighting it, in particular criminal penalties, which are necessarily complementary to the actions of the sporting movement.

Lastly, the medical monitoring of research into performance now goes beyond the simple administration of chemicals with doping effects.

The diversification of objectives in the fight against doping since the first federal regulation cited above has shifted the dividing line for sharing skills between the sports authorities and the public authorities.

Having remained almost exclusively in the field of sports, the fight against doping has been considered to be a shared field of competence when today we would undoubtedly be obliged to admit that to a large degree it involves distinct and complementary jurisdictions.

These preliminary comments have no academic scope.

They determine to a large extent the assessment that may be made of the effects of the 2005 Convention on the effectiveness of the fight against doping and the actions of the public authorities.

The paradox highlighted by the national consultants' studies is that the obligations on States laid out by the Convention are only loosely binding, despite the fact that the new challenges in the fight against doping would justify a strong and coordinated commitment by States and the most specific provisions imposed on States, subject to the legal difficulties of transposing into domestic law the principles of the "World Anti-Doping Code" appendix, essentially fall within the field of sports disciplinary sanctions and, moreover, are drawn up under conditions deemed unsatisfactory with regard to the constraints of the internal or international laws of the States, which are not sufficiently taken into account by WADA. Taking the argument further, public authorities are cautious in exercising their responsibilities and the sports movement is inclined to delegate its responsibilities to those authorities.

This finding, in the form of a paradox, deriving from the analysis of monographs and exchanges with national consultants, will inspire the recommendations of this report, which seek to contradict the fear too often stated that it is costly to resolve ambiguities. Developments in the fight against doping should ideally remove this risk.

0.2 Summary of the legal and institutional landscape.

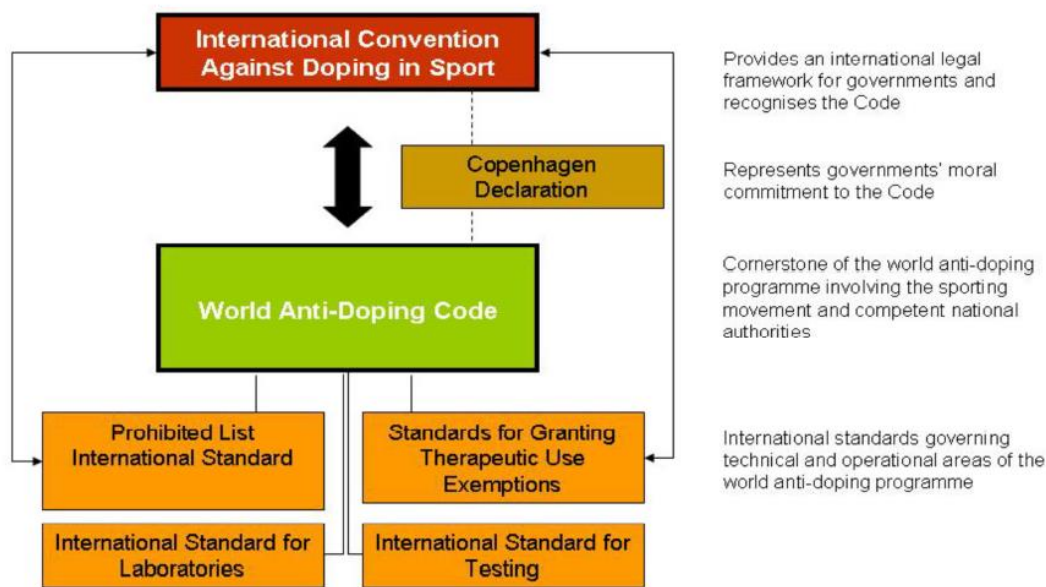
States have expressed a common will to combat doping with the aim of protecting the integrity of sports competitions. This awareness materialized at the third International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport (MINEPS III) in December 1999.⁹

⁸ Jean-Francois Villotte and Rhamdames Killy, the manipulation of competitions subject to public international law. *Jurisport* 145, September 2014.

⁹ Final report of the third International Conference of Ministers and Senior Officers responsible for Physical Education and sport (MINEPS III)

The International Convention against Doping in Sport was adopted under the auspices of UNESCO on 19 October 2005, entering into effect on 1 February 2007. It has been ratified to date by over 180 States, bearing witness to a common will to combat doping.¹⁰

The Convention aims to combat banned substances and methods, to regulate their use for therapeutic purposes, to facilitate international cooperation, to regulate the marketing of food supplements and to promote the development of research and educational programmes on doping.



➤ The World Anti-Doping Agency

The World Anti-Doping Agency (WADA) was founded in 1999, aimed at the promotion and international coordination of the fight against doping. WADA is a private law foundation, the originality of which lies in its equal composition, being funded and administered jointly by States and the sports movement.

WADA's principal missions are:

- The coordination of the development and updating of the World Anti-Doping Code;
- Support for scientific research and the annual publication of the list of prohibited substances and methods. WADA manages the accreditation of laboratories;
- It is also responsible for coordinating the fight against doping internationally.¹¹

➤ The World Anti-Doping Code and programme

This concerns the document "harmonising regulations regarding anti-doping in all sports and in all countries".¹² Five international standards complement and specify the provisions of the Global Code:

¹⁰ According to UNESCO's website: <http://www.unesco.org/new/fr/social-and-human-sciences/themes/anti-doping/international-convention-against-doping-in-sport/>.

¹¹ According to information from the World Anti-Doping Association.

- controls;
- the work of laboratories;
- authorizations of use for therapeutic use (TUE);
- the list of prohibited substances and methods; and
- the protection of personal information.

This Code and the standards are intended to evolve and to be systematically updated.¹³

➤ **National anti-doping organizations (NADO)**

According to WADA, NADOs are: (...) *responsible for monitoring the athletes from their country during and outside of competitions, as well as athletes from other nationalities competing in their country. NADOs are also responsible for sanctioning violations of anti-doping rules and for carrying out anti-doping education programmes.*¹⁴

They must accept the principles of the World Anti-Doping Code, implement and apply them, in order to be considered as compliant by WADA.

NADOs are reference institutions in the fight against doping in the seven countries studied. Their missions are nevertheless quite distinct. By way of example, some NADOs are responsible for disciplinary procedures while, in other cases, specific entities have been established.

The regulations deriving from WADA, a Swiss private law foundation, are by nature private regulations.

The binding force of the global anti-doping programme, understood as the World Anti-Doping Code and all the standards, are different for sports organizations and for States.

Sports organizations are private entities which agree to implement private regulations and therefore to adopt the rules of the Code in formal terms.

The States which agreed to observe the rules of the World Anti-Doping Programme, which is a set of regulations under private law, nevertheless did not give these a binding character in domestic law. The very object of the UNESCO Convention – an international public convention – was to organise the legal conditions of a legal commitment by States to observe the provisions of the Code and certain international standards.

In reality, the agreement ultimately does not have a direct effect on the Code, with States obliged to adopt appropriate measures for transposing the principles of the code into domestic law.¹⁵ Two texts from WADA apply directly, without the need for national transposition: the list of prohibitions and the standard for Therapeutic Use Exemptions (TUE). There is thus an obligation for States which have ratified the Code to adopt regulations consistent with its principles. The appropriate procedures and the effectiveness of transposition may differ notably from one State to another, both in terms of deadlines and because of constitutional constraints or international commitments. It should be noted that failure to take account of this problem of a hierarchy of regulations in the procedures for developing and updating WADA's anti-doping programme, which initially formed the origin of the structure of the Convention that relegated the Code to an annex not directly applicable

¹² Website of the World Anti-Doping Association.

¹³ Website of the World Anti-Doping Association.

¹⁴ Website of the World Anti-Doping Association.

¹⁵ Articles 3 and 4 of the International Convention against Doping in Sport.

to the domestic law of States, continues to produce negative effects on the difficulties of transposition and their deadlines.

Strictly speaking, the text of the Convention (object and procedures for international cooperation between States for preventing doping in sport) has only a few binding provisions, even though it deals with specific issues which fall directly under the jurisdiction of the public authorities. It is thus unsurprising that the national consultants' reports show the implementation of strictly standard provisions by States to be rather ineffective.

1. THE PROBLEM OF ASSESSING THE EFFECTIVENESS AND EFFICIENCY OF PUBLIC POLICIES TO COMBAT DOPING: ANALYSIS BY NATIONAL CONSULTANTS

The reports by seven national consultants that are attached to this report are an indispensable complement to it. It is not the intention of this report to provide an exhaustive summary of the arguments and analysis in the national assessment reports.

Implementation of the International Convention against Doping in Sport of 19 October 2005, its annexes and appendices and the efficacy of the associated anti-doping policies vary among the different countries studied here. It nevertheless emerges from this study that the problems are not with the countries' determination to implement effective policies to combat doping but arise out of other factors, starting with problems external to States and inherent in the Convention itself, or inherent in the fight against doping. There are also problems internal to States, but they have not prevented a more or less complete transposition of the principles of the Code into domestic legal systems.

1.1 Problems unconnected with the national environment for implementing the Convention

These problems are of two kinds: they arise out of the Convention itself (1.1.1) and out of the general environment for action to combat doping (1.1.2).

1.1.1 Implementation problems due to the actual nature of the Convention

➤ Objectives without binding provisions

The Convention sets out a number of objectives without linking them with binding operational provisions. This inevitably results in considerable differences in implementation, which is detrimental to coordinated action by States.

Thus the Convention provides that signatory States should:

- Ensure domestic coordination of the fight against doping for all organizations and authorities involved;¹⁶
- Restrict the availability of prohibited substances and methods by adopting measures against trafficking and measures to prevent and restrict the possession and use of these substances and methods, albeit without specifying the content of these measures;¹⁷
- Take measures against athlete support personnel who contravene anti-doping rules;¹⁸
- Encourage producers and distributors to establish best practices for marketing and distribution of food supplements;¹⁹
- Encourage and facilitate implementation of doping controls by sports organizations;²⁰
- Assist sports organizations and anti-doping organizations in gaining access to an accredited laboratory;²¹

¹⁶ International Convention against Doping in Sport, Article 7.

¹⁷ International Convention against Doping in Sport, Article 8.

¹⁸ International Convention against Doping in Sport, Article 9.

¹⁹ International Convention against Doping in Sport, Article 10.

²⁰ International Convention against Doping in Sport, Article 12.

²¹ International Convention against Doping in Sport, Article 1.

- Promote international cooperation and support WADA’s mission;²²
- Support education and training programmes;²³
- Establish codes of good practice;²⁴
- Promote anti-doping research.²⁵

The practical arrangements for implementing these objectives are left to the discretion of States Parties. Moreover, the Convention does not lay down any methods for monitoring the effectiveness of the policies pursued and still less for common assessment of results.

➤ **Transposition and intelligibility problems of the World Anti-Doping Code**

The World Anti-Doping Code, appended to the Convention, contains specific binding provisions to combat doping but needs a transposition procedure.

The World Anti-Doping Code is not directly applicable in domestic law and must first be transposed into the legal systems of signatory States.²⁶ National anti-doping organizations are responsible in particular for adopting and implementing the Code’s rules and policies. Such implementation is problematic in several respects:

- States are struggling to meet the deadlines for transposing the Code into their domestic legal systems. Their problems are due in particular to the complexity of the Code and its rules, sometimes combined with the red tape entailed by internal transposition procedures, as emphasized by the Spanish consultant:

“Appendix 1: World Anti-Doping Code

Given the complexity of the regulatory transposition, there has been a delay implementing the current World Anti-Doping Code.”²⁷

It also appears from the Romanian report that WADA had not thought enough about how to ensure effective transposition of the Code’s provisions into domestic legal systems.

“This binding dual reference of conformity leads at times in practice to confused situations and to an objective impossibility to duplicate word by word certain articles of the WADA Code in the ambit of Romanian legislation (a requirement by WADA standards).”²⁸

In France, for example, problems with transposition meant that, when certain measures implementing the World Anti-Doping Code came into force, they were already out of date in terms of evolving international standards:

“The first is the regulatory authorities’ problem in meeting transposition deadlines. Following the Order of 2010, implementing decrees were signed on 13 January 2011, followed, nine months later, by Decree No. 2011-57 on anti-doping testing, Decree No. 2011-58 on disciplinary measures and Decree No. 2011-59 containing various

²² International Convention against Doping in Sport, Articles 13 and 14.

²³ International Convention against Doping in Sport, Article 19.

²⁴ International Convention against Doping in Sport, Article 20.

²⁵ International Convention against Doping in Sport, Article 24.

²⁶ International Convention against Doping in Sport, Article 4.

²⁷ Spain, interim report, p. 35.

²⁸ Romania, final report, p. 56.

provisions on action to combat doping. Because of the delay, some provisions of these decrees implementing the above Order were already out of date in terms of the Convention's International Standard on TUEs, amended from 1 October 2010 and coming into effect on 1 January 2011.²⁹

“However, to date, the French system has not yet incorporated the new principles of the 2015 World Anti-Doping Code into French law. Although transposition is in progress as a result of government authorization to take legislative measures ensuring compliance with the principles of the 2015 World Anti-Doping Code (Law No. 2014-1663 of 30 December 2014), the Order is still being drafted.”³⁰

Thus, of the seven countries studied, Brazil, France, Romania and Spain had not yet transposed the 2015 World Anti-Doping Code into their domestic legal systems at the time of writing:

SIGNATORIES WITH RULES IN PROGRESS³¹

Code Signatories

The following Code signatories, whose compliance is fully monitored, have not yet drafted and submitted to WADA anti-doping rules fully in line with the 2015 World Anti-Doping Code or are undergoing a parliamentary process that can still possibly lead to amendments to the draft legislation. It is important to note that in some countries such parliamentary process is required in order to implement the 2015 World Anti-Doping Code in the national legal system.

Updated as of 30 September 2015

LIST OF SIGNATORIES

National Anti-Doping Organizations (NADOs) or National Olympic Committees acting as NADOs

Category	Sport Organizations
National Anti-Doping Organizations (NADOs) or National Olympic Committees acting as NADOs	<ul style="list-style-type: none"> • Andorra – Commission d’État antidopage d’Andorre • Belgium – <ul style="list-style-type: none"> ○ Joint Communities Commission ○ French Community of Belgium NADO ○ Ministerium der Deutschsprachigen Gemeinschaft Belgiens • Brazil – Autoridade Brasileira de Controle de Dopagem (ABCD) • Colombia – COLDEPORTES • France – Agence française de lutte contre le dopage • Greece – Hellenic National Council for Combating Doping (ESKAN) • Hungary – Hungarian Anti-Doping Group

²⁹ France, interim report (French only), p. 12.

³⁰ France, final report (French only), p. 12.

³¹ Information from WADA.

Category	Sport Organizations
	(HUNADO) <ul style="list-style-type: none"> • Israel – Anti-Doping Committee of Israel • Mexico – Comité Nacional Antidopaje de México • Romania – National Anti-Doping Agency of Romania • Serbia – Antidoping Agency of Serbia (ADAS) • Slovakia – Slovak Anti-Doping Agency (SADA) • Spain – Agencia Española de Protección de la Salud en el Deporte (AEPSAD) • Ukraine – National Anti-Doping Organization of Ukraine

However, the Romanian consultant has just told us that the 2015 version of the World Anti-Doping Code has recently been transposed into Romania's domestic legal system.

- **No institution for supervising or supporting effective implementation of the Convention and the World Anti-Doping Code**

While the World Anti-Doping Agency oversees compliance of States' policies with the World Anti-Doping Code and publishes compliance reports, it has no means of enforcement at its disposal and has no real supervisory powers enabling it to play this role. Moreover, because of its legal status it has difficulty exercising its remit as it lacks adequate legal and institutional legitimacy. Monitoring of the policies of States Parties to the Convention by a private foundation governed by Swiss law, even if it has joint governance, is an aspect that weakens the monitoring system.

1.1.2 Problems concerning the general environment for action to combat doping

- **Newness of recognition of the need to combat doping**

Although the recognition of the need to combat doping effectively is incontrovertible, it is also relatively recent and the newness of many of the rules introduced makes assessment difficult at present.

- **Newness of anti-doping legislation**

The reports by the seven national consultants show clearly that implementation of effective legal instruments to combat doping is a recent phenomenon. While some States have had arrangements for combating doping for several decades (Spain passed a law containing anti-doping provisions on 15 October 1990, and France drew up its first anti-doping legislation in the 1960s), most of the state legislation studied in this report is quite recent.

Hence, in Jamaica, anti-doping rules come from the 2014 Anti-Doping in Sport Act, which came into force in 2015. Kenyan rules come from the 2013 Kenya Sports Act, which refers to doping although it is not the Act's main subject, with more comprehensive rules due to be introduced soon. In Romania, specific legislation on doping dates from 2006 and 2008. Anti-doping rules in Brazil were adopted through two decrees in 2011 and 2012, according to the Brazilian NADO. Saudi Arabia reformed its NADO in 2013. Spain also reformed its anti-doping system by a law of 20 June 2013. The French system has been overhauled and supplemented on several occasions since 1999.

The lack of hindsight that would allow effective national assessment is underlined by many of the national consultants. Moreover, for countries with older versions of the rules, there are no comprehensive assessment studies meeting academic standards.

➤ **No national assessment studies**

The fight against doping suffers from a real shortage of research. This recognition is shared by all the national consultants, including, by way of example, the Brazilian consultant:

“When performing a mapping of the scientific literature about doping in Brazil, we can find a big gap in this theme. At the same time that Brazil grows in quantity of published research nationally and internationally, the studies on drugs in sport lag behind this development.”³²

Very few studies have been devoted to the issue, whatever the angle of approach: public health, pharmacology, epidemiology, biology, sociology, etc. Even though French legislation is among the oldest, the French State Audit Office has stressed the following:

“No epidemiological studies providing a detailed mapping of doping practices and their consequences for health have yet been carried out. The current lack of any studies irrefutably establishing the adverse effects of doping on health adds to the trend of tolerance observed. Athletes practising leisure sports may also be affected by consumption of products on the doping list. Mapping their consumption in terms of age and number of hours of sport practised would indicate the extent to which the policy ought to be actively directed towards amateurs at all levels.”³³

Lack of data, particularly on doping practices and the effects of doping on public health, hampers recognition of the doping problem as well as undermining the effectiveness of policies already being implemented inasmuch as the latter are not necessarily geared to doping practices. This deficiency is also illustrated by the Jamaican report, which emphasizes that there are no studies of how public opinion perceives the doping problem and that policies are being implemented “in the dark”:

“Finally, a major deficiency lies in the fact that there is no scientific survey of public opinion or of the sports community concerning the understanding of anti-doping policies and the perception of how doping issues should be addressed. This is somewhat surprising given the relatively robust nature of polling capacity in Jamaica and the frequency with which opinion on a national and sectoral level is surveyed concerning public issues. The absence of survey data means that the development of effective policies and the implementation of appropriate measures takes place, so to speak, ‘in the dark’ without any reliable guidance or feedback from the public.”³⁴

Here again, the general environment is still a major obstacle to implementing effective policies, in so far as the subject is relatively new and not much studied and is not a priority issue, other than during occasional “media frenzies”, for either the public or the authorities. This dearth of studies and research is one of the most striking and significant lessons from the reports by the seven national consultants.

➤ **Emergence of new objectives in the fight against doping**

The first rules to address doping problems sought only to guarantee the integrity of sports competitions. The aim was just to ensure that athletes in general and, more particularly, athletes

³² Brazil, final report, p. 12.

³³ French State Audit Office report, *La politique publique de lutte contre le dopage dans le sport : donner une nouvelle impulsion* (“Public policy to combat doping in sport: lending fresh impetus”), February 2015.

³⁴ Jamaica, final report, p. 11.

participating in top competitions, competed fairly. The current wording of the World Anti-Doping Code still bears witness to this goal, since its rules are geared to competitive practice.

Today, anti-doping policies still reflect the fact that integrity of competitions was the sole aim when they were being drafted. In Romania, for example, the fight against doping primarily targets Olympic and international athletes or, at the very least, top athletes in competitive sport:

“The Registered Testing Pool (RTP) for 2013 consists in 300 athletes affiliated with 26 national sport federations. Pursuant to the above-referenced Government Decision No. 1056/2009, the categories of athletes included in the RTP are: (a) international-level athletes and members of the Olympic and Paralympic pools; (b) national-level athletes – seniors, youth, cadets, juniors – selected based on the place occupied in the annual ranking of the national sport federations; (c) athletes who are serving an ineligibility period.”³⁵

This objective is now out of date. The doping problem no longer concerns these athletes alone but today extends to amateur sport – even non-competitive sport – and this creates other difficulties, such as fairness of competitions and, in particular, a public health problem.

The February 2015 report from the French State Audit Office evaluating public policies to combat doping clearly illustrates this problem and the twofold nature of current anti-doping objectives, which encompass both integrity of sports competitions and public health requirements:

“Action to combat doping is aimed primarily at elite sport, with two targets: firstly, 20,700 (active and former) elite athletes, and secondly, a ‘target group’ consisting of a few hundred athletes selected by the agency every year from among the first group. Testing of the second group, which is subject to specific monitoring rules, is carried out mainly at competitions or during training for competitions.

However, under the French Sports Code, the agency’s action to combat doping must also address public health concerns. It therefore covers an extremely broad target of 17 million licensed athletes. This choice, which is not shared by all countries, explains why a substantial number of urine or blood samples are taken every year, estimated to be at least 10,000 by the agency, in order to establish the credibility of its work as a whole, given the very low level of preventive action taken by the Sports Ministry and sports federations. Two thirds of samples are taken from the broader target of licensed athletes at all levels and one third from young high-level or professional sports ‘hopefuls’ [...].

The agency does not differentiate its testing strategy sufficiently for each of its three targets (the ‘target group’, elite athletes and other licensed athletes), and its performance indicators are not fit for purpose. In 2013, 66% of AFLD testing was carried out in competitive events and 34% elsewhere. These figures, which do not distinguish between targets, are doubtless not really comparable with figures from agencies in other countries whose testing covers mainly high-level and professional sport.”³⁶

The spread of doping in amateur sport has given rise to new public health issues. These issues are a far cry from initial anti-doping objectives and resources and call for a re-examination of action to combat doping as well as the resources for doing so. The latter now seem ill-adapted to combating a widespread phenomenon that goes beyond the sports movement and competition.

If the fight against doping is to be effective, its objectives must therefore be redefined with clarity, and it must extend beyond professional competition to all doping practices. The fact that various

³⁵ Romania, interim report, p. 14.

³⁶ French State Audit Office report, *La politique publique de lutte contre le dopage dans le sport : donner une nouvelle impulsion* (“Public policy to combat doping in sport: lending fresh impetus”), February 2015.

public authorities in Saudi Arabia, including the Saudi Food and Drug Authority (Saudi FDA), are collaborating in this field bears witness to this realization:

“There is existing collaboration put in place between Saudi Arabian Anti-Doping Committee (SAADC) and Saudi Food and Drug Authority (Saudi FDA), Saudi Customs, Saudi sports federations and military sectors (sports departments), Ministry of Interior, Ministry of Defence and Ministry of National Guard regarding doping control and education.”³⁷

Similarly, the desire for and implementation of education and prevention programmes in schools and universities in Romania and Jamaica shows a determination to target anti-doping action more broadly:

“Regarding public education and awareness-building the effectiveness of this programme is reduced by the absence of sustained engagement with the educational institutions in Jamaica. This is of particular importance given the special significance to Jamaica's Sport Programme of athletics at the secondary as well as primary school levels. The country's annual National Championships and its preceding competitions involve well over one hundred boys' teams and an equal number of girls' teams. JADCO clearly recognizes this shortfall. In January 2015 the Executive Director stated that 'JADCO will be working with the relevant agencies to develop the curriculum to be taught in schools as early as the primary level'. This enhancement of school education in anti-doping matters would obviously improve preventive measures and lay the foundation for strengthening Jamaica's compliance with the objectives of the Convention.”³⁸

- ▶ The campaign 'Champions for a Clean Sport!' ran from 2006 to 2009. It addressed athletes aged 16 to 21 enrolled in physical education schools, high schools and universities or enlisted with the Olympic centres for junior athletes.
- ▶ Another recurrent campaign was 'First Steps for a Clean Sport' – launched in 2011 and developed in partnership with the Romanian Ministry of Education. This project is still ongoing and runs based on two modules. So far it has achieved an overall outreach of more than 3,000 school pupils, who attended over 30 educational activities distributed all around Romania. As underlined earlier in this report, the national anti-doping strategy recognizes the role of the community in the development of an athlete since a very early age.

As such, this campaign targets school-age students enrolled in elementary schools and sports high-schools with an aim to promote the intrinsic values of sports as a set of references in the prevention of and fight against doping.”³⁹

However, this new challenge is a fundamental problem illustrating the mismatch between current national and international systems and the concrete reality of doping today.

1.2 Difficulties linked to national contexts

Issues within States Parties may also constitute barriers to the effective and assessable application of the 2005 International Convention against Doping in Sport and the World Anti-Doping Code (1.2.1). However, the Code seems to have been transposed even if difficulties remain (1.2.2).

³⁷ Saudi Arabia, final report, p. 4

³⁸ Jamaica, final report, p. 11

³⁹ Romania, final report, p. 31

1.2.1 Obstacles linked to national contexts

- **States' political will to act is dictated more often by contingencies than by their obligations under the Convention.**

In the absence of any truly binding obligations in the Convention, public authorities' real desire to act has often been dictated by contingencies and sometimes delayed factors.

As an illustration, the Brazilian doping control laboratory has just been accredited and is now authorized to analyse doping test samples. The Brazilian laboratory has therefore complied with the standards of the World Anti-Doping Agency. This effort has taken place within the context of the organization of the Summer Olympic Games by Brazil in 2016.

“Montreal, 13 May 2015 – During the meeting held in Montreal today, the WADA Foundation Board obtained the interim report on implementation with and compliance with the Code, and approved the accreditation of the laboratories in Brazil (Rio de Janeiro) and Turkey (Ankara).”⁴⁰

This political will is critical to the establishment of effective anti-doping policies. The Jamaican report points to insufficient political will, as illustrated in particular by the absence of formalized collaboration between the institutions involved in the fight against doping and the lack of codes of conduct and best practices.

“Collaboration with this wider set of bodies is informal, ad hoc and not governed by any official protocols.”⁴¹

- **Promoting codes of conduct, best practices and ethics, regardless of the sources**

“These are being promoted, but have not yet been formalized.”⁴²

The absence of truly legally binding measures in the Convention is leading certain States to act only in contingencies or crisis situations (Brazil and Jamaica).

Naturally, the weight of economic difficulties experienced by certain States, given the lack of equalization and financial support measures for anti-doping policies, are leading them to favour other policies.

The Jamaican report underlines that:

“On the financial side, despite efforts by successive administrations, the lack of economic growth over many decades constrains the funding that needs to be applied for the proper staffing and resourcing of anti-doping arrangements in sport.”⁴³

Doping rules have often resulted from new awareness due in particular to legal and media scandals, rather than a consistent long-term policy arising from commitment under the Convention. Another consequence is that the fight against doping is subject to States' cumbersome administrative and legal processes.

Nonetheless, when States decide for contingent reasons to act against doping, the framework of the Convention helps them in terms of methodology and the choice of actions to carry out and prioritize.

⁴⁰ WADA website (translated from the French)

⁴¹ Final report by Jamaica, p.5

⁴² Final report by Jamaica, p.8

⁴³ Final report by Jamaica, p. 11

➤ **The question of financial resources**

In view of the reports examined this new awareness among public authorities is undermined by the disparity in the resources that can be mobilized in very difficult economic contexts and the understandable choice of priorities.

Even countries within the panel studied, that are considered to have more resources, are facing caps or even reductions in the budgets allocated to anti-doping efforts.

The implementation of effective anti-doping policies requires costly resources. The resources available in the seven countries studied are significantly varied. For example, Romania, Spain, Brazil and France have accredited laboratories which are authorized by WADA to analyse doping test samples and which meet its required standards.

In contrast, the report by Kenya underlines a lack of available means for anti-doping efforts, although this lack is not the only difficulty revealed by the national consultant's report. There is no budget allocated to anti-doping or any true technical capacities to address this issue. The absence of budgets and structures does not enable an effective policy to be implemented.

- “1. The Kenya Sports Act 2013 only mentions doping and does not give details or set up structures for implementing doping policies in the country.
2. There is no strong anti-doping institution in Kenya. (...)
7. There is no budgetary provision for anti-doping activities by these sports bodies.
16. There is no national monitoring mechanism, owing to the lack of proper structures and of any strong and competent anti-doping authority.”⁴⁴

➤ **Institutional difficulties**

All the reports mention institutional difficulties reducing the effectiveness of anti-doping policies.

These difficulties are due in particular to the existence of multiple bodies in the anti-doping field. These include the National Anti-Doping Organizations (NADOs), dedicated public authorities or authorities that may intervene occasionally in anti-doping efforts, the sporting movement and in particular national and international federations. The institutional context is therefore complex and segmented, and undermines the effectiveness of the fight against doping. However, cooperation is one of the objectives of the Convention, as recalled in the Brazilian report:

“The State Party has encouraged cooperation between anti-doping organizations, public authorities and sports organizations within their jurisdiction and within the jurisdiction of other States Parties to achieve the objectives of CICDE.”⁴⁵

The first difficulty noted concerns the coordination of all the stakeholders involved in the anti-doping campaign. This recurrent problem is raised by all the national consultants. The report by Saudi Arabia emphasizes that collaboration is not always optimal, undermining the effectiveness of anti-doping efforts:

“There is collaboration put in place between the Saudi Arabian anti-doping Committee (SAADC) and the country's Food and the Drug authority (Saudi FDA), customs, sport federations and military sectors (sport departments), Ministry of the Interior, Ministry of Defence and Ministry of National Guard regarding doping control and education. However, such collaboration is not optimal and there is a need for wider cooperation.

⁴⁴ Final report by Kenya, pp. 39-41

⁴⁵ Final report by Brazil, p. 5

There is no existing direct collaboration with crime and police departments. There is, however, case-by-case cooperation, and task forces are set up to investigate particular cases in relation to crime and drug abuse or if there is information about the selling of prohibited substances in sports centres. Otherwise crime and police investigation is outside the scope of SAADC. Issues related to alcohol and drugs in Saudi Arabia are the responsibility of the drugs control commission and outside the scope of SAADC. We recommend that such cooperation should be in a structural framework to be more efficient and productive.”⁴⁶

Yet this cooperation is essential to the effectiveness of the anti-doping campaign, as underlined in the Spanish report. Indeed, this issue is particularly sensitive in Spain, owing to the autonomy granted to regional governments, which increases the number of authorities involved in anti-doping efforts.

“Taking into account the special composition of the Spanish State with its 17 regional governments, it is necessary to ensure that the coordination entrusted to the AEPSAD is carried out.”⁴⁷

The involvement of multiple authorities, even those only indirectly competent in the anti-doping programme, often undermines the consistency of anti-doping policies. In France, for example, the system is based mainly on collaboration among numerous institutions:

“The French approach mobilizes numerous stakeholders with different statuses and objectives.

The French anti-doping agency (Agence française de lutte contre le dopage – AFLD) with its laboratory in Châtenay-Malabry and its scientific steering committee (a public authority independent from both ministerial power and the sporting movement), mainly carries out control and analysis tasks, exercises disciplinary powers and participates in prevention policy, in line with the 1 February 2012 law aiming to reinforce sports ethics and athletes’ rights.

The public authorities in charge of sport (the national department of sport and the regional departments of youth, sport and social cohesion) are involved in prevention and help to organize controls and anti-trafficking efforts:

The law enforcement agencies in charge of anti-doping (the central office for environmental and public-health offences, the customs investigations and information department, and the “judicial customs” department) are competent under the authority of the courts for combating the trafficking of doping substances; and

The National Olympic and Sports Committee and the sporting federations, which implement the law created by the International Olympic Committee (IOC) and the international federation, respectively, are also involved in efforts to prevent doping.

The effectiveness of the French system depends on their collaboration.⁴⁸

Power struggles also exist between these authorities and the other stakeholders in the anti-doping campaign, particularly the sporting movement.⁴⁹

⁴⁶ Final report by Saudi Arabia, p. 4

⁴⁷ Final report by Spain, pp. 11-12

⁴⁸ Report of the French Court of Auditors (Cour des comptes), *La politique publique de lutte contre le dopage dans le sport : donner une nouvelle impulsion*, February 2015

⁴⁹ Report of the French Court of Auditors (Cour des comptes), *La politique publique de lutte contre le dopage dans le sport : donner une nouvelle impulsion*, February 2015

In addition, there are certain legal difficulties related to the international and constitutional law of each State Party. As described earlier, the French NADO enjoys certain disciplinary prerogatives. Their implementation is problematic in terms of the application of the European Convention on Human Rights, and the interpretation of Article 6 (1) on the right to a fair trial has been analysed as requiring the separation of the functions of prosecution and judgement by administrative authorities with disciplinary jurisdiction. These requirements apply to AFLD when it decides on disciplinary action.

“The multidisciplinary group has expressed reservations on AFLD’s accumulation of different functions, its disciplinary authority and in particular its power to reform.

In principle, opinions have been expressed on those functions, in that they appear to contravene the principle of separation of the functions of prosecution and trial.

The principle of the separation of authorities for prosecution and trial is intended to guarantee the principle of independence and impartiality of the bodies in charge of inflicting sanctions. This principle derives from Article 6 (1) of the European Convention on Human Rights.”⁵⁰

The principles of the Convention, especially on the sanctity of the home and the right to respect for private and family life, therefore limit the effectiveness of certain measures, such as the obligation for athletes to be available at any time and place requested by the World Anti-Doping Code.

“In particular, it appears that the WADA rules on the night-time testing of athletes go against the European Convention on Human Rights. According to our sources, the World Anti-Doping Code’s provision for the night-time testing of athletes will probably be separated and not transposed.”⁵¹

“Article 8 of the European Convention on Human Rights stipulates that ‘everyone has the right to respect for his private and family life, his home and his correspondence’. The European Court of Human Rights (ECtHR) ensures that national legislations offer appropriate and adequate safeguards against abuse, home visits and searches, and that the disturbance is not disproportionate (ECtHR ruling on *Funke vs. France*, 25 February 1993)”.

The inviolability of the home is not expressly provided for in the Constitution. However, the Constitutional Council conferred constitutional status on this principle in a decision on tax raids: *CC, 83-164 DC, 29 December 1983. It is this principle that determines that no search may be carried out between 9 p.m. and 6 a.m. (except in specific cases related to the fight against criminality and organized crime under the control of a forensic judge): article 59 of the Code of Criminal Procedure.*

In order to reach a compromise, the Council of State has advised the French Government to transcribe this requirement with the following conditions:

- *Testing may occur after 9 p.m. only with the athlete’s consent.*
- *The testing must be limited to the taking of samples.*
- *The testing must ensure proportionality between infringements to the athletes’ rights and the importance of the anti-doping programme.*

It is with these guarantees of respect for constitutional principles that France intends to transcribe the new 2015 WADC principles. Limited transcription will therefore be involved.”⁵²

⁵⁰ Final report by France, p. 15

⁵¹ Final report by France, p. 13

⁵² Interim report by France, p. 15

Similarly, the automatic nature of sanctions introduced by the Code is problematic, given the personal nature of the sanctions and penalties. Although mentioned in the French report, these difficulties potentially concern all States Parties having constitutional standards and represent a further difficulty for transposing the Code.

“This principle is opposed to the individualization of penalties in Article 8 of the Declaration of the Rights of Man and of the Citizen that makes the validity of disciplinary sanctions conditional on their respect for proportionality with the allegations. The Council of State is alert to this since it does not hesitate to monitor the proportionality of federal sanctions (Council of State, 2 March 2010, French Athletics Federation – FFA). The administrative court can therefore rescind any disproportionate sanction.

By making provision for automatic sanctions in article 10, the 2015 WADC contravenes the condition of proportionality explicitly required by the administrative court.

To overcome this obstacle, the Council of State considered, in its opinion of 26 June 2014, that the provisions of the new Code should ‘be read as enabling the establishment of a system of maximum sanctions’, thus avoiding any risk of unconstitutionality.

Consequently, the sanctions system should be subject to the principle of proportionality and should not apply the automatic maxima stipulated in the 2015 WADC.⁵³

Power struggles in terms of the sanctions for anti-doping breaches still exist in certain countries, such as France (the powers of the Court of Arbitration for Sport and the French administrative jurisdictions, the juxtaposition of the time limits for disciplinary appeals and hearings by the administrative court, etc.). These aspects, which had already been underlined in national consultants’ interim reports, are again mentioned in their final reports, demonstrating their importance for the efficiency and effectiveness of the implementation of anti-doping policies.

The implementation of a global strategy for cooperation among public institutions concerned by the anti-doping campaign and with the sporting movement, seems critical to the implementation of effective policies. Therefore, changes in the Code must be sufficiently anticipated to integrate the legal difficulties linked to certain major constitutional principles shared by most of the States Parties to the Convention.

1.2.2 The delicate evaluation of the transposition of the Code and the application of the Convention

➤ Undeniable momentum, with transposition difficulties

In all the countries studied, coordination between stakeholders at the national level has been initiated to pursue the objective of the Convention, the List of Prohibited Substances and Methods has been published and integrated into the national legal systems, and the States have endeavoured to adopt the regulation, despite often being incomplete and difficult to apply, aiming to manage and monitor dietary supplements:

“These tables show that Spain, in its firm commitment to fight doping, is one of the countries effecting the largest number of analyses among the athletes competing and training in Spain, both in and out of competition. (...)

It can therefore be concluded that the efforts being made in Spain in recent years to prevent, deter and control doping are giving positive results and are in line with nearby countries applying similar policies in favour of the fight against doping.”⁵⁴

⁵³ Interim report by France, p. 15

“We are therefore of the opinion that promotion of best practices developed through international cooperation is endorsed in Romania in terms of legislation, policies and the long-term anti-doping strategy.”⁵⁵

“Based on this assessment report, SAADC has played a successful role in combating doping in Saudi Arabia.

It has made great achievements in implementing the WADA code and the UNESCO Convention, particularly by conducting the national anti-doping programme as well as training and education.”⁵⁶

The measures for applying the Convention are highly diversified and limited in scope. This results in considerable heterogeneity in the systems studied.

All the reports reflect shared gaps in the fields of doping research, education and prevention. The Brazilian report underlines in particular the inadequacies of education and research programmes in the fight against doping:

“We conclude that the gaps in the Implementation in Brazil of the International Convention Against Doping in Sport focused on topics related to Education and Training and Research. (...)

“Although there have been various partnerships in order to achieve the benchmark, the experience has not yet been sufficiently prolonged and implemented, mainly regarding educational actions.”⁵⁷

Saudi Arabia acknowledges that doping research has not always been a priority, even if funds have been obtained to remedy this situation:

“Doping research usually is not a priority in research centres in Saudi Arabia. Funding is usually going to health programmes which are more important for the community. This this year, however, SAADC successfully obtained funding from the King Abdullah International Medical Research Centre to study the prevalence and patterns of use of prohibited substance among athletes in Saudi Arabia.”⁵⁸

The need to boost research, education and prevention efforts is a concern voiced in all the reports.

The transposition of the Code by the countries studied is problematic, as described above. Its real effectiveness in domestic legal systems is not always clear in the national consultants’ reports. Romania’s report illustrates the impossibility of applying the edited version of the Code published by WADA. The report recommends that the Code take into consideration national legislative systems after comparative analysis to ensure its effectiveness in domestic legal systems.

“We are of the opinion that the international norm should constitute the outcome of a comparative law study which should be devised giving consideration to relevant national legislation – in order to fulfil its role in a more effective manner.”⁵⁹

Furthermore, the compliance of the Brazilian NADO is still being debated.

⁵⁴ Final report by Spain, pp. 64-65

⁵⁵ Final report by Romania, p. 35

⁵⁶ Final report by Saudi Arabia, p. 16

⁵⁷ Final report by Brazil, pp. 7-8

⁵⁸ Final report by Saudi Arabia, pp. 5-6

⁵⁹ Final report by Romania, p. 56

AMERICAS

Compliant	Non-compliant
Antigua and Barbuda	Argentina
Aruba	Bolivia
Bahamas	Brazil
Barbados	Guyana
Belize	Haiti
Bermuda	Dominican Republic
Canada	Uruguay

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➤ **The specific situation in Kenya**

As a result of the 2010 constitutional reform in Kenya, the Convention is not directly applicable to its national legal system. The interim and final reports emphasize that the Convention has not been implemented and that no real national anti-doping policy is yet in place:

- The 2013 law, which was intended to develop an anti-doping policy fails to provide detail or structure the implementation of a national policy;
- According to information provided by the Kenyan national consultant, Kenya has just set up its NADO, the *Anti-Doping Agency of Kenya (ADAK)*;
- Kenya does not have the necessary resources to implement tests or any specific anti-doping budget; and
- Current technical capacities are insufficient (...).

Certain recommendations are made in the report to improve the application of the Convention and its annexes and appendices, in particular:

- The establishment of a legally-recognized dedicated national agency funded by the government and the federations;
- Criminalization of doping;
- Implementation and support for research and education;
- The involvement of primary and secondary schools and universities in the anti-doping campaign;
- The establishment of an accredited laboratory in partnership with a university ;
- The holding of seminars and conferences to educate people and raise awareness of doping; and
- Compliance with WADA instructions for the implementation of anti-doping regulations by 1 January 2016.

“There is little or no effective implementation of the Convention, its annexes, appendixes or Articles 8 and 10 of the Convention in Kenya.”⁶¹

➤ **Evaluation difficulties experienced by national consultants**

As underlined in the national consultants’ reports, gaps in research and studies have represented a major obstacle to the production of reports by the national consultants and the evaluation of public policies. In the absence of sufficient data, it is difficult to evaluate objectively the effectiveness of anti-doping policies. This observation emerges clearly from all the reports, which attempt to evaluate objectively the policies implemented in each of the States Parties studied but are lacking in the necessary benchmarks and comparative tools, as well as the statistics needed to assess objectively and precisely the effectiveness of policies implemented.

The absence of proper anti-doping research and study programmes is therefore as much an inadequacy and a breach in the application of the Convention itself as it is a barrier to the evaluation of the anti-doping policies implemented pursuant to the Convention.

For example, in France, the first proposals of the Senate committee on the effectiveness of the anti-doping campaign (report published in the *Official Journal* on 18 July 2013) are grouped under the theme of “KNOWING”:

- Implement a “truth and reconciliation” committee;
- Authorize and finance retrospective epidemiological studies;
- Identify violations that have led to doping convictions;
- Regularly carry out university research on the state of trafficking of doping products;
and
- Organize, through federations, an analysis of the risks attached to each discipline.

⁶¹ Final report by Kenya, p. 41

The following points emerge from the contributions of all the national consultants:

- **New political awareness, facilitated by the 2005 Convention, of the need to introduce global, coordinated public anti-doping policies alongside the sporting movement;**
- **In the absence of binding measures under the Convention, a great heterogeneity in the policies conducted, accentuated by the disparity in the available financial resources, distinct cultural approaches to doping that influence its social acceptability, and the absence of global coordination of the policies pursued in each of the States Parties;**
- **Processes of transposing the global Code into domestic law that is often lengthy and complicated by objective legal difficulties, probably arising from the conditions for enactment and revision insufficiently taking into account the hierarchy of legal norms. The effectiveness of its application is often difficult to assess for want of shared indicators;**
- **Often weak commitment by national sporting movements, and objective difficulties in coordinating action with public authorities;**
- **Gaps in prevention and education policies and often obsolete tools, when they exist;**
- **Research policies that fall outside the strict scope of accredited laboratories and are very underdeveloped and insufficiently supported by independent academic research institutions;**
- **National policies for targeting controls that are poorly suited to the new challenges of combating doping and exclude the sporting populations that are most removed from competition and sometimes even the sporting movement, thus neglecting public health objectives from the outset;**
- **An almost universal absence of contact and collaboration with the relevant pharmaceutical industry or public pharmaceutical research to exchange information and prevent the rogue use of the chemicals created;**
- **The absence of performance indicators;**
- **The absence in all the countries studied of epidemiological studies enabling the practices and consequences of doping to be mapped out;**
- **Low-priority anti-trafficking actions and different criminal policies from one country to another, making police and judicial cooperation complicated and ineffective;**
- **An almost non-existent and poorly coordinated information policy at both the national and international levels; and**
- **NADOs with relatively little autonomy from States, in the absence of allocated public or sports-generated revenues.**

2. POSSIBLE SHORT- OR MEDIUM-TERM CORRECTIVE ACTIONS

The changes in anti-doping objectives mentioned earlier have shown that policies needing to be driven by public authorities are no longer strictly linked to competitive sport or even sporting activities within sports institutions belonging to national or international federations.

Combating doping has long been the quasi-exclusive domain of the sporting movement.

Subsequently, collaboration between the sporting movement and States has emerged as an operational necessity to enable the sporting movement to combat doping more effectively.

This necessity remains.

Yet the scope of this organized collaboration, as embodied institutionally by WADA, cannot extend to all the issues raised by doping, particularly public, social and health concerns, the prevention and repression of which falls to public authorities.

After the historical first two phases of the anti-doping combat, when the sporting movement acted nearly exclusively in the first phase, and the public authorities undertook complementary action in the second phase, a third phase should be envisaged. To generate legal and institutional consequences, this would consider that the anti-doping combat requires the intervention of public authorities separately from sports authorities, along with complementary action by sporting and public authorities.

In short, in addition to WADA's joint coordination role, there is room for a strengthening of the distinct mechanism for supporting and coordinating public authorities' action by the intergovernmental Organization that is UNESCO.

The reinforcement of an internal support, assistance and evaluation mechanism within UNESCO, aimed at helping public authorities to take effective, coordinated action to prevent and combat doping, would not undermine WADA's distinct, necessary role of coordinating the joint action of sports authorities and public authorities within sporting movement in order to preserve sports ethics by combating doping.

To provide a practical illustration of this proposal, it should be noted that the handling of health issues impacting a population of athletes outside sporting institutions (practicing sport in private structures or outside any institutional sporting framework) cannot be a matter for the inherently impotent action of the sporting movement, that the analysis of the danger of certain products and the consequences for the repression of trafficking can only be understood in light of inequality in competitive sport, and that the coordination of States' legal action cannot be based on a foundation of private law. However, the integration of the Global Code's disciplinary measures into national law and the creation and protection of NADOs in charge of sporting discipline in its broadest sense require WADA-coordinated collaboration between sporting and public authorities.

2.1 RECOMMENDATIONS ON THE BASIS OF ESTABLISHED OR VIRTUALLY ESTABLISHED LAW

2.1.1 The strengthening of UNESCO's role of support, assistance and assessment, working alongside States Parties

- **Continued evaluation missions supplemented by support missions when appropriate and mobilization of the UNESCO fund for the implementation of public policies**

Given the non-binding character of the provisions of the Convention and in the areas falling under the action of public authorities, we should continue assessment missions consisting of international and national experts under the auspices of UNESCO, followed, wherever appropriate, by assistance assignments for establishing adequate institutions and coordination structures and the enactment of appropriate legal standards. The support missions could, if necessary, mobilize financial aid mechanisms.

Future evaluation missions may differ from the initial missions which are the subject of this report, in the following areas:

- In each country considered and *in situ*, a two-person team would be created – for a length of about four weeks – comprising a national consultant and an international expert, relying on a multidisciplinary team previously established. The presence *in situ* of an international expert will provide better harmonization of assessment methods and the use of comparative elements.
- At the end of this assessment and if required, a support mission could be created to draw up standards, develop educational and preventive programmes, or implement sustainable institutions or coordination structures at the request of the State Party.
- This legal or institutional technical assistance would be granted, entirely or partially, depending on the availability of public resources (economic and social conditions) and proportionally to the means allocated to the fight against doping within the sport budget of the State considered, within the framework of the UNESCO fund (for the implementation of public policies).

- **Training and preventive actions**

In the framework of assistance following the aforementioned assessment activities (design and implementation), the UNESCO support unit could, in particular, support prevention and education programmes, particularly in schools, and for the compilation of a best practices guide and its on-line dissemination.

- **A study to define a common methodological framework for assessing doping practices and the effectiveness of the policies implemented**

As a UNESCO project, this study could be entrusted to an independent academic research structure requesting States Parties to comply, to bring about harmonization for relevant comparisons between countries.

The research and studies have been extremely fragmentary and have hindered evaluation work in the countries audited by national consultants. To remedy this difficulty, which considerably affects the effectiveness of anti-doping policies, it seems judicious to propose a methodology at the international level in order to guide the States in their research, both for subjects of study and for the expected standards.

In this capacity, common benchmarks and a common methodology should be adopted to create a shared foundation for research on doping, which could boost a weak research sector.

- **A scientific committee to select and support research on combating doping and analysing its effects by issuing a UNESCO label for the issues judged to be the most relevant**

This label might involve the granting university or research scholarships.

- **Preparation of a platform for the sharing of information and recommendations, in conjunction with the competent international institutions (United Nations and Council of Europe), on harmonizing criminal definitions for the progressive establishment of strengthened police cooperation and criminal justice policies**

In order to become more efficient, the fight against doping must rely on exchanging and sharing information at international level and between operational public authorities to better identify networks and new doping methods and anticipate them.

The processing, use and dissemination of information and data should be considered via this platform.

The platform should also provide for consideration of better and more efficient panel and policing cooperation among States Parties.

For this purpose UNESCO could, together with other international institutions and INTERPOL, and jointly with WADA, set up an ad hoc expert group to propose an operational system of coordination among the States.

2.1.2 The role of WADA

The question of the adaptation of national legal systems to changes in the World Anti-Doping Code is essential for the effectiveness of combating doping within a harmonized framework.

The national consultants highlighted the difficulties relating both to the deadlines for internal procedures and to the observance of principles of the Constitution and the Convention.

It is accepted that the States Parties undertake to adopt appropriate measures in accordance with the principles stipulated in the Code and to observe these principles.

It is nevertheless underlined that the actual text of the Code is not an integral part of the Convention. In order for it to be effective in internal law, it must therefore be transposed.

However, few observers have made the point that in the absence of an amendment to the UNESCO convention, as the French Council of State underlined during its discussions, the amendments made to the World Anti-Doping Code subsequent to those appearing in the Appendix to the Convention and notably those made in 2013, do not create any legal obligation for the States.

In other words, the principles which the States must respect are those of the 2003 Code, in effect on the date of the Convention itself, and not those of subsequent versions.

This legal element should lead WADA to take even greater care in ensuring that the constitutional and Convention constraints of the States which it must convince are taken into consideration, rather than simply ordering them to introduce the new provisions of the Code into their internal legislation.

➤ **Improving the recognition of national rights prior to any changes in the Anti-Doping Code**

As explained in the final report on Romania, it is essential that WADA carries out a comparative analysis of the States' legislation prior to updates to the World Anti-Doping Code.

This would allow avoid or at least reduce the difficulties currently faced by States in transposing the Code into their domestic legal systems.

The rules of the World Anti-Doping Code specifically concern disciplinary measures and controls. These must observe the principles of the right to a fair trial. These considerations are common to most legal systems.

➤ **Taking into account the principles of international law**

The international commitments of States must also be considered prior to any amendment to the Code. These commitments may prove binding on the recipient and be opposed to some provisions of the World Anti-Doping Code.

By way of example, the European Convention for the Protection of Human Rights and Fundamental Freedoms protects the right to respect for private and family life and could form an obstacle to certain control procedures.

➤ **Assistance from a committee of legal experts**

It seems important that the World Anti-Doping Agency should have a legal committee capable of anticipating difficulties in order to reduce problems with transposition for States.

This Committee must work with all of the major legal systems: Anglo-Saxon common law, Roman law, Islamic law, customary law (...), but also international law which should also be considered before any substantial change in the scope of the World Anti-Doping Code.

➤ **The strengthening of the independence of the NADO with regard to the public authorities and the sports movement and the corresponding increase in their powers of autonomous monitoring, including for international competitions**

The independence of NADO with regard to national public authorities is relative, as highlighted above, both because of the conditions of appointment of their members and owing to their sources of funding, which are often public. Their statutory independence might yield to their financial dependence.

It would hence be helpful to impose a strengthened standard of independence concerning the conditions for nominating their members as well as funding through earmarked resources and not via budgetary subsidies.

This independence would thus extend their powers of control over international competitions rather than those of international federations, under the enhanced control and coordination of WADA, in order to end the debate on the supposed existence of conflicts of interest. This reform would reconcile vigilance and controls of the same kind over an international competition wherever it is organized (WADA coordination) and the lack of conflicts of interest (independence).

Disputes on their disciplinary powers should be brought together and fall under the Court of Arbitration for Sport.

The internal organization standards of NADO should take into account the requirement of structural separation between the service performing the controls and the investigating and judicial bodies within them.

2.2 LONGER-TERM RECOMMENDATIONS

All the developments regarding the diversification of the objectives pursued by the fight against doping, which exceed the strict remit of sports institutions, even benefiting from the complementary action of the public authorities, tend to demonstrate the existence of a specific domain of intervention of the public sector authorities.

Beyond a disturbance to the “sporting order” resulting from breaches of the rules of the game, the issues of public and social order in the fight against doping practices justify strengthened action by public authorities.

At the same time, the rules of evidence for doping within the framework of traditional sport are diversifying, moving away from simple analytical methods and requiring techniques similar to those of criminal evidence, with the corollary of an increased concern for the protection of individual freedoms.

These factors must lead to thinking about the strengthening of the binding nature of the provisions of the UNESCO Convention. For its part, the World Anti-Doping Code remains the preferred instrument for cooperation between States and the sports movement, permitting the uniform application of sports discipline and its rules in all the States.

On the occasion of this reflection on strengthening the binding nature of the provisions of the Convention for States in the fight against doping, the question of extending it to all tampering in sport deserves to be asked.

The 2005 UNESCO Convention was a deepening and a spectacular expansion of the 1989 Convention of the Council of Europe.

Strengthening the provisions of the UNESCO Convention could be an opportunity for it to expand its scope to all tampering in sports events, making the same normative jump with regard to the recent convention of the Council of Europe against the manipulation of sports competitions relative to that which took place in 2005 with regard to the 1989 Convention.

Indeed, the fight against tampering in competitions bears many similarities to the fight against doping. Besides their specific object of ensuring respect for the integrity of the sport, the relevant legal instruments all call for enhanced cooperation between the sports movement and States for distinct actions. We also observed that the means of combating these attacks on the integrity of sport have many similarities; necessary coordination of disciplinary, civil and criminal proceedings, creation of alerts and targeting of controls.

CONCLUSION

The assessment of anti-doping policies which has been carried out by national consultants with the support of multidisciplinary teams in seven States Parties to the Convention has revealed a variety of difficulties.

Doping, with its recent developments, naturally forms part of a very deep-rooted and predominant phenomenon in our societies: the medical, social and economic belief in the perfectibility of the human body. This is illustrated by investments by large corporations to that end, especially major Internet companies developing interconnected objects in the behavioural and medical fields.

Furthermore, doping challenges the very idea of competitive sport. Unsurprisingly, the critical debate on means of combating doping, the assessment of their relative effectiveness and the role

of sporting and public stakeholders in the implementation of these policies underlines the relationship between doping and the drive for competitiveness and improved performance that is considered inherent to sporting competition. (This is illustrated in the ongoing media debate on the supposedly ever-greater demands on Tour de France riders and the repeated doping scandals.)⁶²

Yet the fight against doping in sport is distinguished from the general debate on improving performance. In fact, adherence to the rules of competition is an integral part of competitive sport, and the ban on doping follows this logic. Gradually, however, other objectives such as public health goals have been assigned to the fight against doping. This diversification of objectives has major consequences on the legal means for combating doping since this policy can concern audiences who are not strictly tied to sporting institutions. The assessments carried out demonstrate the difficulty of taking these developments into consideration.

At the same time, the need to enable the effective application of sporting rules (the effective ban on athletes taking doping products) has led to the involvement of States to allow the rules (e.g. the list of banned doping products and methods, and the Code) to be transposed into national law. However, some equate the very frequent changes to these lists which create legal instability and are even seen as a form of sporting discrimination, combined with the demands for ever-greater effectiveness, with a risk of violating human rights, creating objective difficulties for transposition and therefore undermining the desired effectiveness.

Furthermore, national consultants have made a general observation concerning the worrying absence of national or international benchmark studies on the consequences and evaluation of doping practices.

The following points emerge from the various evaluations, with the panel having carefully taken into consideration the wide variety of political and economic contexts:

- A concern that States Parties should benefit from stronger UNESCO capacities in terms of monitoring, evaluation and support;
- The need for conventional measures relating to stricter public policies, not just sporting ones;
- A call for greater consideration by WADA of concerns surrounding legal security and individual rights, and the strengthening of stakeholders' independence to avoid any suspicion of conflicts of interest; and
- A desire for a debate on the conditions for competition organization that could reduce the risks of exposure to doping and the risks of tampering in general.

Noting the remarkable step forward taken in 2005, all of the national consultants, along with the international consultant, are calling for extensions, for which UNESCO may be the most effective and legitimate agent.

⁶² Jean-Noël Missa and Pascal Nouvel, *Philosophie du dopage*, PUF 2011.