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INTRODUCTORY PAPER ON THEME 1

CURRENT ETHICAL ISSUES IN SPORT:

THE FIGHT AGAINST DOPING AND MATCH-FIXING

- 1.1 Role of the governments in addressing emerging challenges in the fight against doping in sport
- 1.2 The Council of Europe Convention on the Manipulation of Sports Competitions: state of play

prepared by

Synopsis

Following the entry into force of the 2015 World Anti-Doping Code and recent revelations about high profile cases, the worldwide anti-doping movement is at a crossroads. With a view to strengthening the world anti-doping system, governments will have to take a stand on a number of crucial issues.

1.1 Role of the governments in addressing emerging challenges in the fight against doping in sport

Doping has recently been a particularly topical issue, making numerous headlines across the international media and attracting extensive public attention. Cases of corruption, mismanagement, manipulations with doping samples and interference in the work of the anti-doping organisations have been exposed in different countries across the globe, triggering negative public reaction and mistrust and putting into question the credibility of the existing anti-doping system. A robust response to these new challenges is urgently required and it is crucial for the governments to have a clear vision of how they can strengthen their support to the global fight against doping in sport and what measures they should adopt to help improve effectiveness, independence, transparency and accountability of the anti-doping programmes at national and international levels.

While recognising the global magnitude of the challenges faced, public authorities should clearly aim at strengthening their co-operation worldwide with a view to ensuring an efficient and timely response to emerging problems. Co-ordination between the representatives of the public authorities in the World Anti-Doping Agency (WADA) is particularly important and the positive experience accumulated via the Ad Hoc European Committee for the World Anti-Doping Agency (CAHAMA) might be shared with other continents. A platform where representatives of the governments in WADA statutory bodies from all continents could discuss relevant issues, share experience and search for practical solutions to emerging challenges should be developed and Europe has to play an important, perhaps even leading, role in this process.

The first steps in that direction have already been taken, led by Europe among its public authorities within WADA: representatives of the governments of all five regions in the WADA statutory bodies agreed to gather in London prior to the WADA Executive Committee and Foundation Board meetings to discuss not only the mechanisms for ensuring effective collaboration, but also concrete proposals on how the world anti-doping system can be improved. These proposals are based on the firm belief expressed in October 2016 by the public authorities' representatives in the WADA Executive Committee that in any reform of the world anti-doping system, WADA must remain the only global regulator responsible for co-ordinating, monitoring and standard-setting in the anti-doping field, and that its activities should be based on the principles of independence, good governance, transparency, accountability, respect for human rights, non-discrimination, and equity and equality between public authorities and the sports movement. These proposals imply, inter alia, that with a view to reducing the risks of corruption and conflict of interest, the testing, result management and other anti-doping-related procedures should be fully independent from sports bodies. WADA's capacity, at the same time, should be strengthened to ensure that it can effectively monitor the compliance of these procedures with the World Anti-Doping Code.

These proposals seem to echo and support the idea expressed at the IOC Olympic Summit in October 2015 to establish an international independent testing and investigation authority (ITA), to which the International Federations would be asked to transfer their testing programmes. The

feasibility of this proposal and the main principles upon which such an authority might be set up are currently being examined by WADA, where a political steering group has been created for that purpose under the chairmanship of Ms Valérie Fourneyron (France). The creation of an ITA might be a step in the right direction, but, as agreed collectively by the public authorities of all five continents, its establishment should not compromise WADA's role as the only international regulator in the anti-doping field.

Being a key stakeholder of WADA, the public authorities should also aim to complement WADA's activities where necessary and appropriate, especially where WADA's competences are insufficient. With the entry into force, on 1 January 2015, of the 2015 World Anti-Doping Code, WADA engaged into a serious compliance monitoring programme across the globe and it should be congratulated for the excellent work it does in this regard. Several National Anti-Doping Organisations (NADOs) have been declared non-compliant, which proved to stimulate changes, albeit that WADA's competences for ensuring compliance should be further strengthened. Given the growing overlaps between the areas of responsibility of WADA and public authorities, greater co-ordination of actions of governments, including intergovernmental institutions, and WADA, is needed in order to make the activities aimed at monitoring compliance and offering assistance at national level effective. The Council of Europe and WADA have already developed close contacts, they co-ordinate their actions and work together in many European countries. With a view to further strengthening these links and institutionalising them, a Memorandum of Understanding will be signed between WADA and the Council of Europe during the Conference of Ministers on 29 November 2016.

The 2015 World Anti-Doping Code encourages governments notably to review national anti-doping policy and practice in order to develop better mechanisms of information-sharing and to support NADOs in developing new competences (such as investigations). Governments should also demonstrate greater openness to co-operation with WADA and NADOs, particularly in the fields where their competences and responsibilities may effectively support the work of the anti-doping organisations. Obviously, the principle of the rule of law and respect for individual rights and freedoms must be respected. The Council of Europe, through the Monitoring Group to the Anti-Doping Convention (T-DO), has already engaged in providing guidance to the member states on how to pursue these tasks while remaining compliant with the Anti-Doping Convention and other relevant international standards. A recommendation on information-sharing between the public authorities and NADOs has been adopted by the T-DO in May 2016 and the governments should consider how to implement it in the most effective way at national level.

This recommendation will, together with other actions, lead to closer collaboration between governments and NADOs, which might in turn create a risk of interference into the operational independence of NADOs, the existence of which in some countries is already questioned. As a part of the review of the international anti-doping system, the concept of NADOs' independence should therefore be revisited and clearly defined in the light of new developments in order to ensure that separation of responsibilities is clear and co-operation is not transformed into control.

The anti-doping disciplinary procedures are another issue that has recently been in the spotlight, particularly with regard to recent hearings in the German courts of the so called '*Pechstein case*'. This clearly underlined a need to ensure the independence and impartiality of the hearing process as well as its effectiveness and quality. On the one hand, it became apparent that the disciplinary

procedures should not only be compliant with the World Anti-Doping Code, but also fully respect the international legal standards (particularly the European Convention on Human Rights) to offer athletes adequate protection of their fundamental rights. On the other hand, the situation when, in some countries, each national sport organisation has its own disciplinary panel on anti-doping cases, puts in question the competence and quality of the decisions made by these panels. The T-DO treats the issue of ensuring the independence of the hearing process as an utmost priority as it touches upon the crucial individual rights, to which every athlete is entitled. This is why the work on the new recommendation on independent hearing panels, currently prepared by the T-DO is extremely important as well as the subsequent implementation of this recommendation. The T-DO has already committed itself to engage in active work to promote this recommendation after adoption.

Having witnessed the emergence of new serious challenges in the fight against doping in sport, the governments might consider the need to revise the existing legal framework to take account of the development and complement current provisions with the ones that might help regulate areas which have not existed before. Currently, in addition to the World Anti-Doping Code, the normative basis consists of the Council of Europe Anti-Doping Convention as well as the UNESCO International Convention against Doping in Sport. The Council of Europe convention was adopted in 1989 and was the first international legal document in the anti-doping sphere. Now, more than 25 years later, this convention has to remain effective and relevant in the context where it should function in conjunction with other legal texts and in a world where doping has become a really complex multifaceted issue. Analysing to what extent the Council of Europe Anti-Doping Convention retains its relevance and whether (and where) some of its provisions require updating might be useful to decide if ultimately its revision should be envisaged, particularly with regard to support, at the normative level, the principles of good governance and the core values of the Council of Europe in the anti-doping field.

Participants are invited to focus on the following issues:

- ***How can the governments better support the efforts of WADA to address the deficiencies that were recently exposed by the investigations undertaken by media and independent investigators, particularly with improving the transparency and accountability of their anti-doping policies and making doping control procedures independent from the sport bodies?***
- ***How can the governments improve the protection of the fundamental rights of athletes (covered by relevant international legal mechanisms) in the revised anti-doping policies?***
- ***How can the role of WADA, as the only global regulator in the doping field, evolve, should a new independent testing authority (ITA) be created?***
- ***Is the current international normative framework sufficient to ensure the effectiveness of the fight against doping in sport or if not, could the revision of the Council of Europe Anti-Doping Convention (1989) be considered as one potential solution?***

Draft Resolution No. 1.1

The Ministers responsible for Sport, meeting in Budapest, Hungary, for the 14th Council of Europe Conference on 29 November 2016:

- Recognising considerable challenges that recently threatened the integrity of the international anti-doping system;
- Recognising the need for the governments to review their policies in order to improve the effectiveness of actions aimed at fighting doping in sport at national level;
- Recognising the important contribution of the Council of Europe Anti-Doping Convention to the international fight against doping in Europe and beyond;
- Praising the role of the Ad Hoc European Committee for the World Anti-Doping Agency CAHAMA in fostering effective co-operation between European countries and promoting their co-ordinated position in the World Anti-Doping Agency (WADA) statutory bodies and recognising the importance of sharing this experience beyond Europe;
- Acknowledging the important role performed by the European representatives in the WADA Executive Committee and Foundation Board;
- Re-asserting its support to WADA as the only international regulatory body in the anti-doping field;
- Welcoming considerable efforts made by WADA to promote compliance of the signatories with the 2015 World Anti-Doping Code and encouraging countries to support WADA's actions to ensure compliance with the Code;
- Recognising the crucial role of National Anti-Doping Organisations (NADOs) in the implementation of the 2015 World Anti-Doping Code and need to ensure their operational independence in spite of the possible overlaps of their activities with those of governments;
- Recognising the necessity to improve co-ordination between public authorities worldwide and welcoming the initiative to organise regular meetings of the public authorities' representatives in the WADA statutory bodies;
- Welcoming increased co-operation between the Council of Europe and WADA and particularly the signing of the Memorandum of Understanding between the two organisations;
- Acknowledging the importance of the guidance provided by the T-DO, through its recommendations, to the state parties of the Anti-Doping Convention in amending their policy and practice with a view to supporting the implementation of the 2015 World Anti-Doping Code and encouraging countries to give practical effect to these recommendations;
- Supporting the principles for the improvement and strengthening of the world anti-doping system as agreed at the meeting of public authorities' representatives in the WADA Executive Committee and Foundation Board;
- Recognising that the anti-doping organisations must comply with the rules of good governance and the principle of proportionality, while respecting the fundamental rights of the individuals subjected to the anti-doping regulations, particularly when it comes to data protection;
- Being aware that athletes must be protected from the forced or encouraged doping schemes and be subjected to a proper anti-doping education;

- Encourage member States of the Council of Europe to revise their national anti-doping policy and practice in such a way that would improve their effectiveness and help respond to emerging challenges as well as to ensure that the governments' actions complement those of national and international anti-doping organisations.
- Call for strengthening the ability of WADA to respond to current and emerging challenges in the anti-doping field.
- Ask the European representatives in the WADA Executive Committee and the Foundation Board, in co-operation with the representatives of other continents, to continue to work towards strengthening the world anti-doping system on the basis of the core values of the Council of Europe and the principles of good governance, in particular through:
 - Promoting the independence of the doping control, result management and disciplinary procedures from the sports organisations;
 - Reinforcing the role played by the public authorities in the development and implementation of the world anti-doping programme;
 - Safeguarding the independent role of WADA as the global anti-doping regulator responsible for standard-setting and monitoring;
 - Fully respecting the operational independence of the NADOs;
 - Supporting the efforts to strengthen WADA's capabilities, including the adoption of clear sanctions for large-scale subversions of the anti-doping system and authority and capacity to investigate and to impose proportional sanctions for Code non-compliance;
 - Continuing and intensifying the efforts to develop a robust whistleblower policy, ensuring greater protection for whistleblowers.
- Instruct the Ad hoc European Committee to the World Anti-Doping Agency (CAHAMA) to continue providing active support to the efforts of the public authorities inside and outside Europe, for the improvement of the global anti-doping system.
- Consider promoting further autonomy of NADOs with a view to expanding their scope of responsibilities and providing them with the resources needed to implement the Code.
- Ask the Monitoring Group to the Anti-Doping Convention (T-DO) to reflect upon the possibility of reviewing the Council of Europe Anti-Doping Convention with a view to making recommendations to the Committee of Ministers of the Council of Europe regarding its possible revision.
- Encourage the Monitoring Group to the Anti-Doping Convention (T-DO) to continue its standard-setting work in order to offer practical guidance to the state parties on addressing emerging anti-doping issues in compliance with the Council of Europe Anti-Doping Convention.
- Endorse the institutionalisation of the co-operation between the Council of Europe and WADA through the signing of the Memorandum of Understanding.
- Encourage the Monitoring Group to the Anti-Doping Convention (T-DO) to continue strengthening co-operation with UNESCO.
- Encourage member States to provide national anti-doping organisations and WADA with funding which is sufficient to perform their tasks.

Synopsis

Although the Macolin Convention has been open for signature and ratification since September 2014, it has not yet entered into force. In spite of the progress made thanks to the work carried out by the stakeholders in exchanging information and setting up co-operation activities, there is a risk of losing momentum. We must move forward into a new phase, helped by a roadmap of action tailored towards putting the convention's provisions in place and making a significant difference in the fight against the manipulation of sport competitions.

1.2 The Council of Europe Convention on the Manipulation of Sports Competitions: state of play

The Council of Europe Convention on the Manipulation of Sports Competitions (the Macolin Convention) was opened for signature on 18 September 2014, at the 13th Council of Europe Conference of Ministers responsible for Sport.

The Enlarged Partial Agreement on Sport (EPAS), which co-ordinated the negotiation process, has been active in promoting the convention; it will support the convention Secretariat established in 2016, which is currently preparing the conditions for its implementation. The Macolin Convention provides common definitions and is being mentioned more and more often as a mutual point of reference by a variety of major organisations such as UNESCO, the UNODC, Interpol, the EU, Europol, the IOC and UEFA. It also carries the expectations of a broad range of national and international stakeholders, and the Council of Europe and its partners are currently actively encouraging public authorities to anticipate its entry into force. In this context, the Council of Europe and the European Union launched the Joint Project "Keep Crime Out of Sport" (KCOOS) in January 2016, offering technical and practical assistance to countries in implementing the principles and the spirit of the convention. This project will continue to run until June 2017, with a view to proposing tools and mechanisms which will sustain operational co-operation in the medium and long-term.

Achievements and challenges which still remain to be addressed were acknowledged during the *International Conference on the fight against the manipulation of sports competitions – Promoting and Implementing the Macolin Convention* which took place in Strasbourg on 20-21 September 2016. The event is regarded as an important milestone in the build up to the next operational phase, since participants agreed on the main priorities requiring commitment, such as:

- Countries should be encouraged and accompanied in implementing the convention's measures and principles, even if the convention has not yet entered into force. The rising number of regulatory authorities identified (22) and national platforms officially established (12) shows the determination by those involved to move forward onto concrete actions against the manipulation of sports competitions. Only two countries, Norway and Portugal, have so far ratified the convention and 26 others have signed it. Five ratifications are required for the convention to enter into force;
- The convention covers competences from different public authorities and therefore implies an integrated institutional and legal approach to be based on a comprehensive assessment of the situation, a gap analysis and then the relevant revision of the legislative framework;
- The successful implementation of the convention requires an active involvement of and co-operation with all the national and international stakeholders;
- The convention, which has been designed from the outset as an international instrument open to non-European states, should be promoted outside Europe as it is enjoying growing interest throughout the world;
- Better promotion and awareness-raising should be developed amongst the Council of Europe member states in order to increase the mobilisation of the different public authorities against

the manipulation of sports competitions. They should be encouraged to endorse the Macolin Convention's principles and to ratify this binding instrument, including European Union member states, bearing in mind the European Parliament's position of September 2016 urging the European Union not to stand in the way of member states wishing to proceed.

One consequence of the delayed entry into force of the convention is that the strong momentum that is being given to its implementation in many countries may ebb away. Moreover, the late establishment of a formal framework of co-operation with a "Convention Follow-up Committee" will not enable some urgent needs to be met in terms of international co-ordination. This further increases the risk of wasting resources, as well as creating false expectations, resulting in the depletion of the current goodwill from experts and institutions.

With this in mind, the governments need to act by making a coherent action focused on precise objectives possible, in order to render the efforts at national and international levels more effective. Sports Ministers, who had successfully initiated the convention, today have this opportunity. After the drafting and negotiation phase of the convention which led to its adoption in 2014, and the current phase of mobilising national and international stakeholders, Ministers are invited to consider how the unique capacity of Council of Europe can be strengthened for it to act simultaneously:

- at technical level through field actions and targeted assistance to countries;
- at strategic level by organising a co-operation network with the other international stakeholders, in order to implement a shared working programme, and;
- at political level via its relevant bodies, in each of its member states and from an international perspective.

Such capacity should be harnessed in order to ensure:

- that the convention will eventually enter into force,
- that it will be implemented through effective integrated legislation,
- that the necessary budgetary resources will be allocated in order to allow sustained actions,
- that co-ordination will be established to address the risk of saturation and waste of resources, and finally,
- that it contributes to the defense of sports ethics and the rule of law.

Participants are invited to focus on the following issues:

- ***What are the obstacles that Governments currently face in their processes of implementing the Convention on the Manipulation of Sports Competitions, in particular when it comes to developing the national platforms?***
- ***What should be done within the Council of Europe to promote the quick entry into force of the convention and support its implementation?***

Draft Resolution No. 1.2

The Ministers responsible for Sport, meeting in Budapest, Hungary, for the 14th Council of Europe Conference on 29 November 2016:

- Acknowledging that manipulation of sports competitions contradicts the values of the Council of Europe and is a threat to the rule of law and society;
- Welcoming the wide mobilisation of a variety of actors involving different Ministries, police forces, betting regulators, prosecutors, courts and judges, sport movement, athletes' representatives, and betting operators at national, regional and international levels, referring to the Macolin Convention;
- Welcoming the fact that since its opening for signature, a majority of the Council of Europe member States have signed it, and two of them have already completed their process of ratification.
- Call for a quick entry into force of the convention in order to legally frame collective efforts toward the fight against the manipulation of sports competitions and to set up efficient co-operation mechanisms.
- Commit to providing relevant responses for overcoming obstacles to the ratification by countries and to promote the convention during national, regional and international events or fora.
- Express their strong support to the Council of Europe Secretariat in developing its unique capacity to act simultaneously at:
 - technical level, to co-ordinate and deliver projects in order to assist and accompany States;
 - strategic level, to contribute to coherent processes;
 - political level, to increase the priority to be given to the fight against the manipulation of sport competitions.
- Support the elaboration of a roadmap whose primary objective is to obtain concrete and visible results across a broad range of experiences, competencies and capabilities which exist in the various states and international organisations, in order to demonstrate the convention's effectiveness and accelerate the mobilisation and co-operation of relevant actors at the national and at the international level.
- Express their support to the Council of Europe to develop partnerships with international organisations and NGOs to promote the Convention on the Manipulation of Sports Competitions to non-European States.
- Recognise the value of continuing to hold the *Conference on the Fight against the Manipulation of Sports Competitions - Promotion and Implementation of the Macolin Convention*, each year with all interested countries and partners to follow-up progress of the roadmap and to update priorities of action.