

The revised World Anti-Doping Code and the future of anti-doping policy

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Structure

- Summary of WADA's achievements
- A review of the revised World Anti-Doping Code: building on achievements
- Beyond the Code: Implementation and compliance; and criminalisation

Summary of WADA's achievements

- WADA, CAS, World Anti-Doping Code, EU & UNESCO
- Increased profile and funding for anti-doping research
- More committed governments
- More committed sports, especially professional/commercial sports
- Code review process exemplary

A review of the revised Code

- Much 'tidying up' (retired athletes, retesting of samples & atypical findings)
- BUT three issues:
 - Penalties
 - Treatment of minors
 - Therapeutic Use Exemptions

Penalties

- Many amendments to allow reduction or increase in 'standard' penalty of 2 years
- Basis for reduction of a penalty:
 - lack of intent (for 'Specified substance')
 - 'substantial assistance'
 - admission of guilt
- dilute principle of 'strict liability'
- Basis for increased penalty:
 - e.g. doping is 'part of a doping plan or scheme'
- Need 4 years as 'standard' penalty?

Treatment of minors

- UN Convention on the Rights of the Child 1989
 - Art 3: best interests of the child
 - Art 5: child be provided with appropriate direction and guidance
 - Art 12: have his/her opinions taken into account
 - Art 19: be protected from abuse and neglect
 - Art 24: right to health
 - Art 33: protection from illegal drugs

Treatment of minors

- Many examples of children (under 18 years) testing positive for drugs:
 - Jessica Foschi aged 15 (steroids)
 - Andrea Raducan aged 17 (pseudoephedrine)
 - South African athlete aged 14 (steroids)
 - at least two Chinese swimmers aged under 18
 - an unknown number of young athletes in the former GDR (average age doping started – 14)

Treatment of minors

- World Anti-Doping Code makes almost no reference to minors:
 - they are defined – below age of majority in home country
 - Art 10.3.2 offers some protection for minors (as victims)
 - Art 10.5 identifies youth as a possible mitigating factor in determining fault and reducing a penalty
 - Art 21.1 (roles and responsibilities of athletes) assumption that minors will be treated in the same way as adult athletes

Treatment of minors

- The Code is says little or is silent regarding:
 - disclosure of names of minors
 - assumption of knowledge regarding doping. ‘to be knowledgeable of and comply with all applicable anti-doping policies and rules ...’
 - no comment regarding the role of parents/guardians
 - no discussion of a possible role for advocates on behalf of the minor

Therapeutic Use Exemptions

- WADA Therapeutic Use Exemption policy
 - Complex for both athletes, federations and NADOs
 - Criteria difficult to interpret. For example:
 - “significant impairment to health” will occur if the substance is not used
 - “no additional enhancement [beyond] return to normal health”
 - What statistical analysis is undertaken?
 - What epidemiological analysis undertaken?
 - What proportion of medal winners have TUEs?

Defining compliance

- 'Measuring compliance is more difficult than measuring implementation. It involves assessing the extent to which governments [or other policy actors] follow through on the steps they have taken to implement international accords'
- Compliance is about depth, breadth and, most importantly, intensity of commitment

Why comply & why not comply?

- Why comply?
 - perceived self-interest
 - cost free/coincidental

- Why not comply?
 - choice
 - inability
 - inadvertence

Enhancing compliance

- Inducements & sanctions (both reactive)
- Systems design (proactive approach)
 - Focus on capacity building (administrative, political, legal & economic)
 - Focus on developing a compliance system
 - A primary rule system (who gets regulated and through what means)
 - A compliance information system (to ensure maximum transparency)
 - A non-compliance response system (a graduated response or just exclusion?)

Code compliance management

- Self-reporting, ‘tick-box’ questions
- Too much scope for subjective interpretation?
For example
 - “Do you apply the currently enforced WADA prohibited list?”
 - “Yes, without any changes”
 - “Yes, without any substantive changes”
 - “Yes, but with a few significant changes”
 - “No”
 - “Do not know”
- Need Council of Europe compliance system with inspection teams?

Criminalisation and maintaining commitment

- Key question:
 - How can commitment of resources at both domestic and international levels be maintained over the medium to long term?

Criminalisation and maintaining commitment

- What will keep doping on the ‘front-burner’? Continued crises? Hopefully not, as interest often rapidly fades.
- WADA stresses the strategy of public health, but increasing discussion about criminalisation.
- Links to either public health or criminalisation run the risk of a loss of control by both WADA and domestic anti-doping organisations

Criminalisation and maintaining commitment

- What is the existing relationship between 'anti-doping/sport' interests and external interests?
- Is there a strategy within anti-doping/sport to link with supportive external interests (public health or law and order) or is/will anti-doping policy be incorporated by external interests (again public health or law & order)?

Criminalisation and maintaining commitment

- Parallel developments?
 - At international level: strengthening of links between athlete's health, public health within a broadly welfare discourse?
 - At domestic level: in an increasing number of countries a link between anti-doping and crime/law and order discourse (discouraged by WADA?)

Conclusions

- The first phase of policy implementation has been very successful
- BUT challenges:
 - to maintain simplicity and clarity of the Code
 - to maintain momentum (commitment & finance in particular)
 - to ensure (demonstrate) compliance
 - to avoid drifting towards an extension of criminalisation