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

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Play the Game, Reykjavik,
October 2007
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