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# **Building intelligence and investigation capabilities to better fight doping in sport in Europe**

Study of legal frameworks and practices  
implemented by  
NADOs and State's law enforcement agencies

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**EXECUTIVE SUMMARY, CONCLUSIONS and  
RECOMMENDATIONS**

May 2024

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Building capacity to better fight doping in sport in Europe  
PPPA-SPORT-2021-FIGHT-DOPING

by

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## 1. FOREWORD

The study on the Intelligence and Investigation (I&I) capabilities of anti-doping organisations and European countries in the fight against doping was commissioned by the World Anti-Doping Agency as part of the Intelligence and Investigations Capability and Capacity Building project (II CAP BUILDING).

In June 2022, WADA was awarded a grant by the European Commission, to increase anti-doping intelligence and investigations capacity in Europe, reduce the prevalence of doping in sport and maximize the health benefits for European youth practicing clean sport.

This 2-year project was selected by the EU following a call for proposals for EU pilot projects for building capacity to better fight doping in sport in Europe.

The regulatory framework for this EU Funding is set out in:

- Regulation 2018/1046 (EU Financial Regulation).
- Commission Decision C (2021)1658 of 17/03/2021 on the adoption of the 2021 Work Programme for the implementation of pilot projects and preparatory actions in education, sport and culture.

This study is part of this project and aims to make recommendations on two of the project's main objectives:

- To grow awareness within law enforcement of how anti-doping investigations operate while enhancing communication between the police and NADOs. The project targets both NADO and state law enforcement agencies from 48 countries.
- To raise awareness among Europe's decision-makers and society at large about the ongoing threat of doping as a public health issue.

The research was conducted by Cécile Chaussard, a senior lecturer and researcher at the University of Burgundy - Dijon (France), who holds a PhD in public law and is a specialist in sports law. She is a member of the Laboratoire de Droit du Sport (sports law lab) of Dijon, a team of the CREDIMI (Research Center for International Market and Investment Law).

The conclusions and recommendations of the study were presented by Cécile Chaussard during the final conference of the II CAP BUILDING Project held in Lausanne on 12 and 13 March 2024, in Lausanne.

The final version of the study was delivered in May 2024 (108 pages). The present document is a short version of the full study, focusing on the executive summary, conclusions and the 23 recommendations to WADA and NADOs, EU member states and the European Union institutions.

## 2. EXECUTIVE SUMMARY

The first version of the World Anti-Doping Code (the Code) came into force 20 years ago on 1 January 2004. The desire then shared by the sport movement and the states to build a legal and operational system to fight against doping resulted in the development - by WADA - of uniform standards at world level, applicable to all sport disciplines. To this end, states have committed themselves through the international convention against doping in sport (UNESCO), now ratified by 191 countries, to take the necessary and appropriate measures to ensure compliance with the principles of the Code and to restrict the availability and use in sport of prohibited substances and methods, by encouraging international cooperation between states' parties and leading organizations in the fight against doping in sport. One question is therefore to identify how countries have implemented their long-standing commitments, and how effective their anti-doping policies have been.

In this respect, the NADOs which are signatories to the Code are supported by their State to fulfil their commitments toward the Code. They are responsible for ensuring that the anti-doping measures set out in the standards drawn up by WADA are applied in practice within their country. To this end, they have wide-ranging powers in particular to carry out anti-doping tests in accordance with a testing program that complies with WADA guidelines, with the aim of detecting and sanctioning athletes who have used doping substances/methods found on the Prohibited List. Moreover, since the integration by WADA of investigation and intelligence capabilities into the anti-doping system in 2015, the NADOs have also had to be structured to collect more intelligence and carry out investigations. The aim of these evolutions in doping detection methods is to strengthen the ability of the NADOs to detect, this time by non-analytical means, the 11 violations of the anti-doping rules (use by an athlete of a prohibited substance/method, possession of a prohibited substance/method by an athlete or athlete support person, trafficking of any prohibited substance/method by an athlete or other person, administration by an athlete or other person to any athlete in-competition of any prohibited substance/method, tampering with any part of doping control by an athlete or other person, prohibited association, etc.).

However, the private or administrative nature of the NADOs limits their powers in terms of intelligence and investigation in so far as they do not have powers equivalent to those of the police, customs or judicial authorities of the states, who alone can carry out criminal investigations. Consequently, cooperation between the NADOs and law enforcement agencies is essential if doping investigations are to be successful.

The final objective of this study, which is part of WADA's Intelligence and Investigation Capability and Capacity Building project, co-funded by the European Commission, is

to identify the various means - legal, political, institutional, financial, etc. - that could be used to improve and strengthen the I&I capacities and capabilities of all the European stakeholders in the fight against doping, i.e. both the states and the NADOs.

To this end, this study begins by examining the current context and the challenges of the fight against doping at the European level, followed by a presentation of the international legal instruments issued by WADA and the two international anti-doping conventions, whose provisions can be used for I&I purposes. Next, we conducted an in-depth analysis of the national legislation and the legal framework for 51 NADOs from 48 European countries about their I&I capabilities, as well as those of the law enforcement agencies and the arrangements for their cooperation.

The data collected enabled us to observe the very uneven level of development and operability of the I&I capabilities of the NADOs and law enforcement agencies in different countries; to identify the financial, institutional, legal and political reasons for the weaknesses in the existing systems; and to highlight a number of good practices that can be used to strengthen as rapidly and effectively as possible, the I&I capabilities of the NADOs, the law enforcement agencies and to improve their cooperation.

#### I&I capabilities of NADOs

### FINDINGS

- 42% of European NADOs do not have a legal framework in place for I&I work,
- 80% of European NADOs spend less than 5% of their budget on I&I,
- 50% of European NADOs have less than 1% I&I staff,
- 53% expressed a clear training need to improve I&I case management practices.

#### Cooperation between NADOs and Law enforcement

### FINDINGS

- 22% of European NADOs do not work closely with law enforcement,
- 24% of European NADOs confirm working closely with law enforcement partners (63% work with Police authorities ; 33% work with Customs authorities ; 14% work with Prosecutors ; 4% work with Interpol/Europol),
- 15% of European NADOs coordinated/supported investigations with law enforcement.

To conclude, in addition to the difficulties and, in some cases, the obstacles to an effective fight against doping that have been identified, due to the heterogeneity of the I&I capabilities of the various European stakeholders in this field, it has been possible to determine several satisfactory legal frameworks and numerous avenues for improvement that have inspired the formulation of **23 final recommendations**.

For greater clarity, the recommendations have been presented by type of stakeholder. The recommendations are aimed at WADA and the NADOs, as well as the states and, to a lesser extent, the European Union, especially for the purposes of further economic and scientific studies. As far as the states are concerned, the very heterogeneous nature of the existing legal frameworks and the varying degree of involvement of law enforcement agencies in the fight against doping means that it was not possible to formulate identical recommendations for all of them. It was therefore decided to present recommendations that could be adapted according to their level of development in terms of I&I. Overall, some of the recommendations are very concrete and rapidly operational, while others aim to achieve longer-term objectives. In any event, they should help to guide states and their NADOs towards improving their legislation, legal frameworks and practices in order to ensure better involvement and structuring of the organisations in charge of investigations as well as greater cooperation between them, through exchanges of information and facilitated joint investigations.



### **3. CONCLUSIONS**

At the end of this study entitled "Building investigation and intelligence capabilities to better fight doping in sport in Europe - Study of legal frameworks and practices implemented by NADOs and States' law enforcement agencies", the following conclusions can be presented. However, it is not our intention to exhaustively repeat all the intermediate conclusions that were formulated at the end of each part of the study and to which readers can refer. The purpose of this general conclusion is above all to summarise clearly, but concisely, the 4 main contributions of the study.

#### **3.1. THE NEED FOR THE ANTI-DOPING SYSTEM TO EVOLVE TOWARDS A STRENGTHENING OF THE INVESTIGATION AND INTELLIGENCE MISSIONS OF THE NADOS AND THE EU MEMBER STATES**

An analysis of the context has shown that there are two reasons why the current anti-doping system should be developed in such a way as to strengthen the NADOs' I&I capabilities. The first stems from the objective observation that the main strategy of testing has very limited effectiveness in detecting doping in sport, given that since 1985, less than 1% of the tests carried out have been positive. The second is the inadequacy of testing as a means of proof for the majority of anti-doping rule violations: tests can only detect 2 out of 11 violations, i.e. the use and presence of doping products, but they cannot provide proof of the possession, administration or trafficking of prohibited substances, or of the falsification of all or part of a test by athletes or other people. Therefore, the only way to compensate for these intrinsic weaknesses in testing is for NADOs to complement testing with information gathering and investigation, and to better target testing.

In addition, concerning the involvement of states in the fight against doping, the study showed that developments in doping, and particularly the increase in the trafficking of doping substances due to the growing interest of organised criminal groups, including on European territory, entail serious risks not only for the integrity of sport but also for public health and the national security of states. These dangers, which weigh on the interests protected by states, justify their mobilisation and cooperation to define a common policy enabling their police, customs, judicial and law enforcement services to carry out joint investigations. Furthermore, it is clear that the NADOs have neither the means nor the objective of combatting such threats to the public order of states. However, they can provide useful support to law enforcement agencies because of their expertise in doping and the doping substances/methods that are involved.

### **3.2. THE SUITABILITY AND SUFFICIENCY OF THE LEGAL FRAMEWORK PROVIDED BY WADA AND THE TWO INTERNATIONAL CONVENTIONS AGAINST DOPING IN SPORT FOR STRENGTHENING THE INTELLIGENCE AND INVESTIGATION CAPABILITIES OF THE NADOS AND OF THE EU MEMBER STATES**

An analysis of the legal instruments that provide a framework for the powers of the NADOs and European countries in the fight against doping first revealed that since 2015, WADA has integrated intelligence and investigations into its overall anti-doping arrangements by amending the Code, developing documents specifically dedicated to I&I, by creating a specific Intelligence and Investigations Department and, finally, by entering into partnerships with several international crime-fighting organisations capable of coordinating the actions of anti-doping organisations and states in cases where the powers of government law enforcement agencies are required. This evolution of the legal framework set by WADA is therefore encouraging the NADOs to develop their I&I capabilities. In addition, the prospect of the adoption of a new autonomous Standard, specifically devoted to intelligence and investigations and due to come into force in 2027, confirms that the NADOs will dispose of an even clearer and more precise framework to implement their new I&I missions.

It then emerged that all EU member states have ratified the two international conventions against doping in sport: the Council of Europe Convention and the UNESCO Convention. They have therefore legally committed themselves to taking the necessary measures in their domestic law to restrict access to doping substances and to develop cooperation between themselves and anti-doping organisations. The states therefore also have an appropriate and sufficient legal framework to develop the investigation and intelligence capabilities of their law enforcement agencies and any other government authorities' that may be interested.

### **3.3. AN OPERATIONAL REALITY: THE DISTINCT BUT COMPLEMENTARY OBJECTIVES OF THE NADOS AND LAW ENFORCEMENT AGENCIES**

When examining the legal frameworks and practices implemented by the NADOs and the states' law enforcement agencies, an operational reality emerged that seems important to highlight in order to clarify the scope of the recommendations that will be made below.

The fight against doping is carried out by the distinct but complementary actions of the NADOs on the one hand, and the states' law enforcement agencies on the other.

- The purpose of the NADOs is to detect and impose disciplinary sanctions for the 11 anti-doping rule violations defined by the Code. The sole objective of the collection of information and the conduct of investigations by the NADOs is therefore to enable them to gather the evidence necessary to establish one or more ADRVs in order to subsequently implement the results management procedure. In this context, the NADOs mainly seek to establish cases of use,

presence, possession or administration of doping substances/methods, as well as failures to comply with whereabouts obligations. Detecting the trafficking of doping products is obviously part of their mission, as it is one of the ADRVs provided for in the Code, but it is by no means a priority. Furthermore, in view of their missions as defined above, the legal status of the NADOs (mainly associations or administrative authorities) does not allow them to have the same investigation powers as the law enforcement, judicial or customs services of the states. NADOs' I&I capabilities are therefore necessarily limited by the nature of their status, their missions and their powers.

- For their part, the main objective of the EU member states is to prosecute and punish the trafficking of Performance Enhancing Drugs (PEDs). Indeed, 84% of European NADOs stated that there is a legal framework by which the trafficking of PEDs is considered a crime in their countries, statements confirmed by studies carried out by the Council of Europe and the European Commission<sup>1</sup>. Unlike the NADOs, the law enforcement agencies in charge of doping investigations will therefore have genuine investigation powers of a judicial and criminal nature if ADRVs are criminalised by national legislation.
- As a result, the NADOs and the law enforcement agencies share the same general objective of combatting doping, but their respective objectives and powers are different yet complementary. The NADOs undoubtedly have the expertise relating to doping processes and doping substances/methods, while the police, customs services and public prosecutors have the investigation powers needed to find evidence of supply networks and trafficking in PEDs, which is often cross-border. Our study shows that there is no question of reversing the roles of each, but that their complimentary nature justifies the development of cooperation between these two categories of stakeholders in the fight against doping in Europe, each being able to offer the other the benefit of its expertise, with the ultimate goal of greater effectiveness.

### **3.4. BEYOND THE DIFFICULTIES ARISING FROM THE HETEROGENEITY OF THE NADOS' AND EU MEMBER STATES' FRAMEWORKS FOR ACTION IN THE FIELD OF I&I: THE DETECTION OF GOOD PRACTICES**

The final contribution that needs to be highlighted stems from the analysis of national legislation on doping, the organisation and operation of the NADOs in terms of I&I, the role of law enforcement agencies in the fight against doping in the various countries surveyed, as well as the MOUs between the NADOs and law enforcement agencies. While the heterogeneity of the situations was obvious, as was the existence of serious obstacles to the effectiveness of the powers of investigation and

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<sup>1</sup> *Compilation and analysis of information of parties to the Anti-Doping Convention on criminal legislation related to doping in sport*, Council of Europe (T-DO LI), January 2020; *Study on the fight against anabolic steroids and human growth hormones in sport within the EU*, to European Commission, by ECORYS, June 2021.

intelligence in doping matters (e.g. for the NADOs, insufficient number of agents trained in investigations and particularly low budget allocated to I&I; for the states, only partial criminalisation of ADRVs and lack of awareness on the part of law enforcement agencies in the fight against doping), a number of good practices were also identified. They naturally emerged in Part 3 of this study during the successive examination of the practices of the NADOs, then of the legislation of the states and finally of the arrangements for their cooperation.

These good practices, listed as accurately as possible throughout Part 3, are obviously a source of inspiration for formulating our recommendations. Indeed, it seems to us that some of them can be implemented quite easily- therefore in the short term - thus making it possible to initiate an evolution favourable to the strengthening of I&I capabilities in the field of anti-doping in the longer term.

## 4. RECOMMENDATIONS

The study highlighted several avenues for improving the I&I capabilities of the various stakeholders in the fight against doping in Europe. For greater clarity in their presentation, it therefore seemed useful to sort them by the type of stakeholders involved: firstly, WADA and the NADOs, then the states and finally, to a lesser extent, the European Union. For each of these stakeholders in the fight against doping, we will propose very concrete and rapidly operational recommendations, as well as the introduction of legal measures necessary for a more in-depth and sustainable development of their I&I capabilities. These recommendations will all be numbered consecutively for easy reference.

### 4.1. RECOMMENDATIONS TO WADA AND NADOS

#### 4.1.1. Recommendations to WADA

**Recommendation n°1.** The objective observation of the inadequacy and limited effectiveness of anti-doping tests calls for the continuation of the development undertaken by WADA in 2015 in terms of I&I, in order to increase the I&I capabilities of the NADOs. While the drafting of a new autonomous international standard specifically dedicated to intelligence and investigations, proposed to come into force in 2027, is a step in this direction, it nevertheless seems to us that the credibility of the anti-doping system makes it necessary for the introduction of this new legal standard to be accompanied by a shift in WADA's and NADOs action strategy. For instance, consideration could be given to gradually rebalancing the weight of testing and I&I to establish guidelines for developing new testing programs that are less quantitative and more qualitative: better targeted tests thanks to intelligence and investigations.

Whether such a recommendation can be put into practice obviously depends on how well structured the NADOs are in terms of I&I. The study has shown that there is considerable heterogeneity between the NADOs. It would therefore be appropriate to apply this recommendation in a gradual way, starting with the NADOs with the most developed I&I capabilities. Indeed, care must be taken not to weaken the action of the NADOs but, on the contrary, to make it more effective by strengthening their I&I capabilities to complement and support their testing programs.

In the context of this recommendation, WADA's I&I department will have a decisive role to play in supporting the NADOs in the continuation of what has been undertaken since March 2023 during the workshops organised for the NADOs and law enforcement agencies.

#### 4.1.2. Recommendations to NADOs

The success of the previous recommendation depends on the development of the NADOs' internal I&I structures. The study shows that this objective requires several financial, institutional and legal measures:

**2.** First of all, the share of the NADOs' budget devoted to I&I capabilities needs to be increased, which will be made partly possible by the rebalancing of testing and I&I. Currently representing less than 1% for 45% of European NADOs and less than 5% for 80% of European NADOs, the amount of financial resources allocated to I&I is clearly insufficient. It should be noted that the largest part of I&I expenditure corresponds to staff costs. An insufficient budget is therefore an obstacle to recruiting competent staff, which is the subject of the second recommendation for the NADOs.

**3.** The majority of NADOs that achieve good results thanks to their I&I capabilities are those that have a dedicated I&I Department made up of a sufficient number of agents, some of whom are experienced police/criminal investigators, while others are analysts, open-source researchers or confidential source handlers.

It therefore seems crucial for the vast majority of NADOs to strengthen their I&I team, either by recruiting such profiles, or by training their agents in investigation skills, or finally by taking advantage, where the state's legal framework allows, of the secondment of an agent by one of the state's law enforcement agencies.

**4.** When the NADOs have enough staff who can commit themselves to I&I missions, it would seem appropriate to create a department specifically dedicated to I&I, which would be devoted solely to this mission and which could also be clearly identified within the organisation chart, particularly by external organisations and individuals.

**5.** Following on from the previous recommendation, and even in the absence of a dedicated I&I department within the NADO, it is essential to establish and identify at least one I&I reference person, who could be the point of contact with law enforcement agencies as part of the development of cooperation, but also with other government authorities potentially interested in the fight against doping as part of administrative investigations. The advanced workshops that WADA has been holding between March 2023 and January 2024 with the European NADOs will certainly make it possible to identify the right person within each NADO.

**6.** It is recommended that the I&I department - or agents with an I&I remit - cooperate with all the other NADOs departments: legal department, testing department, science department and education & prevention department. Internal exchanges of information and knowledge (in scientific matters, for example) are essential to successful investigations.

**7.** As part of this internal cooperation, and to reproduce the good practices that have proved effective, it is recommended that weekly meetings be set up with the testing department regarding abnormalities and target controls.

**8.** In the same vein, it is worth proposing that, as is already the case in some NADOs with a dedicated I&I department, an investigation be opened systematically for each ADRV as a supplement to the results management procedure.

**9.** It is also important for the NADOs to realise that they can provide support to law enforcement agencies with anti-doping powers. The latter often need expertise, or even training, which the NADOs can provide. In this context, it may be recommended that the NADOs create a sort of document database consisting of all the texts, legislation and MOUs existing in their country that can be used in the fight against doping. This document database could then be shared with the law enforcement agency if necessary and would also enable the NADO to liaise with the State in the context of recommendation no. 12.



**10.** The development of connections with law enforcement agencies can also be initiated by the NADO either when there are no existing cooperation procedures (formal or informal) or when these procedures are not implemented in practice. The I&I referent appointed in accordance with recommendation no. 5 will have the task of establishing this contact or developing closer relations with law enforcement agencies. He/she could start by organising regular meetings between the NADO and the law enforcement agencies.

**11.** If neither a legal framework nor a formal or informal procedure existed to organise cooperation and the reciprocal exchange of information between the NADO and law enforcement / government agencies, the NADO should encourage the implementation of an MOU and, if necessary, the drafting of legislation and thus participate in the implementation of recommendation no.19.

Summary of the 12 Recommendations to NADOs	
1. Self-evaluation 2. Budget 3. Recruitment of staff with I&I skills 4. Creation of an I&I Department 5. Appointment of one I&I reference person 6. Cooperation of the I&I Department with all other NADO departments: legal department, testing department, science department, and education & prevention department 7. Organize regular meetings with the testing department regarding target controls 8. Systematic opening of an investigation for each AAF	9. Creation of a sort of document database consisting of all the texts, legislation and MOUs existing in their country  10. Establish contact with law enforcement agencies.  Aims: organize regular meetings and reciprocal training  11. If necessary, encourage and participate in the preparation of legislation/MOUs.  Aims: improve the legal framework for NADO's investigative powers and cooperation procedures between NADO and law enforcement agencies  12. Develop a network of investigators at local level to provide a territorial intelligence and investigation network

## 4.2. RECOMMENDATIONS TO THE EU MEMBER STATES

The recommendations to the EU member states are based on an analysis of the comparative law of the member states<sup>2</sup> in the area of antidoping and the good practices that have been observed. Nonetheless, the very heterogeneous nature of existing legal frameworks and the varying degree of involvement of law enforcement agencies in the fight against doping makes it impossible to formulate identical recommendations for all EU member states. We have therefore chosen to present recommendations that can

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<sup>2</sup> This study went beyond the European Union, since it included the results of a Council of Europe’s survey covering 51 countries, and we also considered Australia. Nevertheless, for the purpose of our recommendations, we will restrict ourselves to the EU member states, while drawing inspiration from all the legal frameworks surveyed.

be adapted according to the level of development, more or less advanced, of the legal framework and the investigation capabilities of law enforcement agencies in the field of anti-doping.

In this context, it seemed useful to us to formulate different types of recommendations. Some of them concern all the member states of the European Union, regardless of the legal framework they have in place to fight against doping. The following recommendations are aimed at states with a relatively undeveloped legal framework: these are measures that can be implemented quickly without the need to immediately embark on a legislative process that can be long and complex in some countries. Finally, the last recommendations will be more challenging, and their implementation is expected in the longer term for these states, for which they constitute an ultimate objective to be achieved at the end of a gradual evolution. By contrast, they could be applied more quickly in countries that are more advanced in the fight against doping but that can still improve their legal frameworks and/or practices to be more effective, particularly in terms of investigations and intelligence.

#### **4.2.1. Recommendations to all EU member states**

**12.** It is recommended for each EU member state to carry out a self-assessment of its overall anti-doping legal framework and its level of effectiveness, particularly with regard to the investigation powers of its law enforcement agencies and their degree of cooperation with the NADO. To achieve this, they will identify all the existing legislative provisions and MOUs that concern, either directly or indirectly, the fight against doping and assess their degree of effectiveness in terms of their operability for the conduct of administrative and/or criminal investigations.

Indeed, this study has shown that some states have specific anti-doping legislation, to which are added numerous provisions that do not directly concern the fight against doping but that can be used in this context: laws on medicines, pharmaceutical products, health, food, drugs, etc. Conversely, other countries only have various laws, with no overall anti-doping framework. These provisions may or may not punish certain anti-doping rule violations (use, possession, administration, trafficking, etc.), which obviously determines the possible degree of involvement of law enforcement agencies: the latter can only really act in anti-doping matters if criminal legislation exists.

Furthermore, in some EU member states, MOUs allow the various law enforcement and government agencies (police, customs, health or food safety authorities, etc.) to cooperate with the NADO on doping-related cases, in addition to or instead of formal legislation where this does not exist. The content of these MOUs can vary greatly: some contain only very general provisions, making cooperation of little practical value, while others are very comprehensive and provide not only for regular contacts, but also for reciprocal information exchange procedures, including for personal data, and enable joint operations to be carried out.

It is recommended that the EU member states rely on the expertise of the NADOs for this work, which will also make it possible to create, reactivate or deepen relations between their NADO and the various governmental organisations likely to be responsible for anti-doping.

This self-assessment could result in the production of a document that would constitute a sort of document database specific to anti-doping - and that could be organised by



theme - which would make it possible to identify all the legislation and MOUs relating to doping, as well as the various government stakeholders that may be involved in the fight against doping.

On the basis of this work and the good practices identified in this study<sup>3</sup>, the states will then be able to self-assess and determine which of the following recommendations best correspond to their situation.

**13.** The second recommendation, addressed to all EU member states, is related to the transposition of the Prohibited List into domestic law. It has been observed that, for various reasons, the annual transposition of this evolving List is not carried out in all states. Yet it is essential that this transposition is carried out on time, as this is the only way that the fight against doping can be harmonised across Europe. If certain substances/methods banned by the List are not considered as such in all countries, this legal difference may represent an obstacle to the conduct of joint and cross-border investigations. Finally, it should be remembered that all the member states have undertaken to transpose the List by ratifying the UNESCO Convention, since the List forms Annex I and is therefore an integral part of the convention.

**14.** The last recommendation, which is common to all EU member states, is the result of the observation by a large majority that law enforcement and government agencies are insufficiently aware of the fight against doping, even in countries with an appropriate legal framework. The NADOs are very often the only authorities to act in this area, even though their powers are limited by their legal status and their purely disciplinary role. Under no circumstances, therefore, can public health and safety be protected by the NADOs alone. States must realise this and make their law enforcement and government agencies aware of the real and essential issues involved in the fight against doping for the State and not just for the sport movement. For example, the increase in criminal penalties for doping, and in particular for trafficking of doping products, can be a signal of how important the fight against doping is for a State.

In order for this recommendation to be operational, states could begin by appointing anti-doping reference persons within the various law enforcement and government agencies that have been identified as potentially interested in the fight against doping (judicial authorities, police services, customs, etc.). These people will then be able to participate in and/or familiarise themselves with the document database referred to in recommendation no. 12 and will contact the NADO's contact person appointed under recommendation no. 5.

#### **4.2.2. Recommendations to EU member states with an inadequately developed legal framework in the fight against doping**

EU member states which are identified (during the self-assessment proposed in the previous development) without any legal framework in the fight against doping, or with an insufficiently developed framework, may follow the recommendation below:

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<sup>3</sup> See developments parts 3.2.3 and 3.3.4 of the study.

**15.** The objective is to progressively build an appropriate legal framework or to complete an underdeveloped legal framework. To achieve this, it is recommended that government authorities take the initiative of putting law enforcement and other governmental agencies that might be concerned by the fight against doping in sport in contact with the NADO. Their exchanges will enable them to identify together:

- the roles and responsibilities of each in the fight against doping in their country.
- the measures and procedures that would be the most appropriate, legally and operationally, to ensure that their respective competences (in their specific areas of intervention) are developed as effectively as possible.
- the best methods of operational cooperation between them: points of contact in each organisation, frequency of meetings, methods of exchanging information, conditions of cooperation for joint investigations, etc.

This work of co-constructing an appropriate framework for strengthening the powers, particularly the I&I powers, of each type of organisation could be based on the results of the aforementioned self-assessment as well as on the WADA workshops/trainings in which they participated and on the good practices identified in this study.

The framework established as a result of this cooperative work will then be submitted to the relevant government authorities so that they can choose the best way to implement it. It is therefore possible to consider, initially, concluding MOUs that could be regularly reviewed and modified in the light of difficulties in application and/or new needs that may arise. At a later stage, following a long term approach, it would be worth considering specific legislative provisions and procedures resulting from these MOUs, which will have been well established and validated in terms of their effectiveness. That could then guarantee the permanent application of the measures and good practices gradually developed.

#### **4.2.3. Recommendations to EU member states with a legal framework that could be improved to strengthen I&I capabilities**

EU countries identified (during the self-assessment proposed in the previous development) with a legal framework for the fight against doping that could be improved or as having found that the application of their legal framework in terms of its operability for the conduct of administrative and/or criminal investigations in anti-doping matters is not sufficiently effective, may follow the following recommendations:

**16.** For countries that do not have comprehensive anti-doping legislation but only various laws that do not directly concern the fight against doping but that can be used in this context: laws on medicines, pharmaceutical products, health, food, drugs, etc.

At the very least, it is recommended that these laws should include provisions relating to the fight against doping, making it possible to connect these laws with the measures required to apply the principles of the Code (article 3 of the UNESCO Convention). Nevertheless, it is clear from this study that the existence of a variety of laws makes it difficult to implement a genuine anti-doping policy in a country which can only be made easier by the existence of a specific overall legislation in this area. Sometimes, this overall legislation can also be linked and refer to the various laws that indirectly concern doping.

It is therefore more appropriate to develop comprehensive anti-doping legislation that includes all the violations set out in the Code for all categories of athlete: elite, amateur and recreational.

**17.** Regarding the introduction of comprehensive anti-doping legislation or the improvement of its content and operational effectiveness, various aspects have been highlighted in this study which countries are recommended to consider as much as possible:

- the scope of this legislation should be as broad as possible to avoid legal loopholes that would hinder the implementation of the powers of the NADOs and law enforcement agencies. It is therefore recommended that this legislation should cover all categories of athletes: elite, amateur and recreational. Only then will it be possible to investigate doping substances/methods used by amateur or even recreational sportsmen and women (sports halls).
- to meet the need for the NADOs to have sufficient investigation powers: it is recommended that a legal framework specifically dedicated to the investigation powers of the NADOs be introduced.

National legislation can therefore provide for the conditions whereby police officers or customs officers can be seconded or made available to the NADO in order to enhance its knowledge of investigation procedures.

National legislation may also provide for certain NADO officials to be posted and deployed throughout the country in order to facilitate intelligence gathering and the exchange of useful information.

Finally, national legislation may provide for the NADO to have the following powers: the power to obtain any documents necessary for the investigation / the power to summon and hear any person likely to provide information / the power to access, with the authorisation of a judicial authority and in the presence of a judicial police officer, any place where training or competitions take place or where physical or sporting activities are practiced in order to gather the information necessary for the investigations.

- to give law enforcement agencies the means to investigate, it would seem appropriate for anti-doping legislation to include a criminal law component. In addition, this study has shown that criminalising the use and possession of doping substances/methods (see Prohibited List) can also enable law enforcement agencies to open investigations, which can then lead to the discovery of more serious behaviours such as a doping network (see Aderlass case) or trafficking of doping products. Criminalising trafficking alone is therefore often insufficient and strengthening I&I's doping capabilities will be facilitated by criminalising the use, possession and administration by an athlete or other person to any athlete in and out competition of any prohibited substance or prohibited method of doping products.

**18.** To make states' investigation efforts even more effective, it is recommended that a dedicated and specialised anti-doping investigations police force be set up.

In addition to being aware of and familiar with the issues involved in the fight against doping, such a specialised unit would generally have the appropriate powers to conduct criminal investigations and to liaise with the judicial authorities, which may themselves be specialised (specialised prosecutors).

Additionally, such a unit may have a privileged relationship with the NADO as part of the cooperation provided for by an MOU and/or by legislation: the NADO may thus provide its expertise to this unit, in particular by passing on information and identifying products in cases of doubt, while the unit may open investigations when the NADO has information and intelligence requiring the use of powers available only to law enforcement agencies.

**19.** It is recommended to draw up or reactivate the MOUs enabling operational cooperation between the NADO and the law enforcement agencies: appoint the prospective points of contact in each organisation, determine the frequency of their meetings, define the procedures for exchanging information, including personal information in compliance with the GDPR, or specify the conditions of cooperation to enable joint investigations, etc.

**20.** The strengthening of I&I capabilities in the fight against doping can also be facilitated by the decentralisation of some of the personnel involved in investigations (NADOs and state's services) within the territory of countries. This territorial network of specialised anti-doping agents enables the collection and exchange of information/intelligence throughout the country. This would also facilitate cross-border investigations into adjacent territories affected by criminal activities related to doping but falling within the jurisdictions of several states.

### **4.3. RECOMMENDATIONS TO THE EUROPEAN UNION**

As a follow-up to this study and in the context of the European Union's interest in the fight against doping<sup>4</sup>, it seems appropriate to propose three recommendations to the European Union:

**21.** Commission studies into the level of production and distribution of certain doping products (e.g. anabolic steroids, growth hormones, some peptides) in Europe and into the current size and expected development of the illegal market for such products in the European Union.

This is indeed a booming market, but there are no specific figures for the European Union. Furthermore, the figures available at global level are far too old (2007 and 2014) to give a current view of the situation. The data from each EU member state resulting from investigations by their law enforcement agencies, and in particular the figures from seizures of doping products and the number of clandestine laboratories dismantled, could provide a starting point for such studies.

**22.** It is also undisputed that the increase in the use of certain doping products within the European Union, such as anabolic steroids, particularly by young people, is a real public health concern. Numerous scientific studies have documented the consequences of taking these substances on the health of individuals, but very few studies have focused on and measured the current and future health consequences of this behaviour on the population of the EU member states. Similarly, no study assesses the current and future financial costs for countries of treating the illnesses and various health problems of people who make intensive use of the doping products in question.

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<sup>4</sup> See developments part 2.3 of the study.

It is therefore recommended that the European Union supports a study on these issues, which is needed for political considerations on the protection of public health within the EU.

**23.** Finally, the last proposal stems from the European Union's already strong commitment to combatting sports-related crime as effectively as possible. The crucial involvement of its agencies (Europol, Eurojust, OLAF, etc.) and their support for the EU countries is proof of this, particularly in the fight against trafficking in doping substances and illegal sports betting. In this context, the European Union is planning to ratify the Macolin Convention on the Manipulation of Sports Competitions<sup>5</sup>. It would however appear that there are links between the criminal networks that rig sports betting on the one hand and those that organise trafficking in doping substances on the other hand. Consequently, the European Union's desire to combat these various forms of sports-related crime could justify ratifying the Council of Europe's anti-doping convention, like all the EU member states<sup>6</sup>.

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<sup>5</sup> Resolution of the European Parliament from 23 November 2021 on *EU sports policy: assessment and possible ways forward (2021/2058(INI))*: “The European Parliament (...) 36. urges the Council and the Commission to break the deadlock on the signing and ratification of the Council of Europe Convention on the manipulation of sports competitions”.

<sup>6</sup> Communication from the European Commission, *Developing the European Dimension in Sport*, 18 January 2011, point 2.1: “Many stakeholders call for a more active EU approach in the fight against doping, for example by joining, to the extent that the competences in this area entitle the Union to do so, the Anti-Doping Convention of the Council of Europe. There is a need to assess the implications of the competence conferred upon the Union in Article 165 TFEU”.

## 5. LIST OF ABBREVIATIONS

<b>AAF</b>	Adverse Analytical Findings
<b>ADO</b>	Anti-Doping Organizations
<b>ADRV</b>	Anti-Doping Rule Violation
<b>CAHAMA</b>	Ad Hoc European Committee for the World Anti-Doping Agency
<b>CAS</b>	Court of Arbitration for Sport
<b>CJEU</b>	Court of Justice of the European Union
<b>Code</b>	World Anti-Doping Code
<b>ECHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>EUROPOL</b>	European Union Agency for Law Enforcement
<b>GDPR</b>	General Data Protection Regulation
<b>I&amp;I</b>	Intelligence and Investigation
<b>IBU</b>	International Biathlon Union
<b>INTERPOL</b>	International Criminal Police Organization
<b>IOC</b>	International Olympic Committee
<b>IF</b>	International Federation
<b>IPC3</b>	Intellectual Property Crime Coordinated Coalition
<b>ISTI</b>	International Standard for Testing and Investigations
<b>ITA</b>	International Testing Agency
<b>MOU</b>	Memorandum of Understanding
<b>NADO/NADA</b>	National Anti-Doping Organization/Agency
<b>OLAF</b>	European Anti-Fraud Office
<b>T-DO</b>	Monitoring group of the Antidoping Convention of the Council of Europe
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>WADA</b>	World Anti-Doping Agency
<b>WADA I&amp;I</b>	World Anti-Doping Agency Intelligence and Investigation Department
<b>WCO</b>	World Customs Organization
<b>WHO</b>	World Health Organization



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