

Legitimacy of Anti-Doping

Working Party Position

The Working Party's opinion on the International Standard for the Protection of Privacy and Personal Information (WP 162) creates many obstacles for the collection and use of personal data in the anti-doping context. In particular, the Working Party suggests that:

- **athletes cannot validate the processing of their personal data by consenting to such processing**, as the Working Party believes that significant consequences could flow from an athlete's refusal to provide consent in the anti-doping context;
- **international anti-doping efforts can only serve an "important public interest" when set out in national law**. WADA believes that the Working Party's analysis may not take into account various important factors;
- **health data required to grant Therapeutic Use Exemptions (TUEs) can only be processed on the basis of national law**. For the reasons outlined in bullet point 1 (above) the Working Party denies that such collection and processing can be validated by consent. It is unclear why TUEs are singled out by the Working Party as, presumably, the same approach would apply to all test results; and
- **Anti-Doping Organizations (ADO) may not process data related to anti-doping violations** unless the law, or a data privacy regulator, specifically permit such processing (see page 12 of the Working Party's opinion).

Did you know?

- In 2007, the Dutch NADO (a private organization) handled nearly 600 TUE requests. In 2008, the German NADO handled more than 4,000 TUE requests.
- 40 % of samples taken worldwide are analysed in Europe.
- Children as young as 12 years old are turning to anabolic steroids for cosmetic reasons. (The Times, 15 June 2009)

WADA's Perspective

- WADA's International Standard requires personal data to be collected and processed on the basis of consent, or another legal basis. If consent is an unacceptable basis for data collection and processing in Europe, relevant European authorities will have to identify acceptable alternative legal bases, as WADA is unable to create such bases itself.
- Once again, the Working Party's focus is on identifying areas of concern rather than evolving workable solutions:
 - ✓ By categorically excluding consent, the Working Party renders current anti-doping practices in Europe illegal, except where Member States have adopted specific laws. This requirement, however, contradicts the Lisbon Treaty, which specifically provides that the specific nature of sport, and in particular, its structure based on voluntary activity, must be taken into account;
 - ✓ Throughout the opinion, the Working Party fails to take into account the international context of anti-doping and the commitment that States have made by virtue of the UNESCO Convention and the Council of Europe Convention. For example, the Working Party never assessed the role of the International Standard for TUEs, which is an integral part of the UNESCO Convention, ratified by most EU Member States;
 - ✓ the Working Party also fails to consider the role that these conventions can play more generally as legal bases for the collection and processing of athletes' personal data; and
 - ✓ the Working Party fails to consider the potential for Article 7b of Directive 95/46/EC (performance of a contract) to act as a legal basis for the collection and processing of athletes' personal data.
- Article 8(5) of Directive 95/46/EC does not govern sanctions imposed by sports federations, as its remit only extends to governing sanctions imposed by public bodies. Where ADOs are public bodies, they would obviously have the right to process that data on the sanctions they impose.

Helpful Links

- **Council of Europe Convention:** <http://conventions.coe.int/Treaty/en/Treaties/Html/135.htm>
- **UNESCO Convention:**
http://portal.unesco.org/en/ev.php-URL_ID=31037&URL_DO=DO_TOPIC&URL_SECTION=201.html
- **International Standard TUE:**
http://www.wada-ama.org/rtecontent/document/TUE_Standard_2009_Final_031008.pdf