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Anti-Doping Convention (T-DO)

**Project on the Compliance with Commitments
Compliance by France with the Anti-Doping Convention**

**Reports by:
- France
- the Evaluation team**

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A. Report by France

Introduction

The aim of the requested report is to assess whether French policy on the prevention and control of doping complies with the European Convention of 16 November 1989. As this Convention is now part of French law following Ratification Act No 19-1144 of 21 December 1990, the assessment will be mainly legal in nature. Such an approach -- which does not exclude broader sociological considerations -- appears necessary for at least three reasons.

The first reason specifically concerns the nature of France's international commitment, which, since it relates to a treaty ratified by the French Parliament, is given by the Constitution (Article 55) a value greater than that of an ordinary Act. The second reason arises from the enacting terms themselves, which include numerous binding provisions that require succinct presentation if the way they function is to be understood by strangers to the French legal system. The last reason, which is linked to the previous two, stems from the relatively non-mandatory nature of the Convention. Strictly legal analysis therefore tends to spill over into administrative science, although analysis based on the latter is heavily influenced by the former.

The principle of the primacy of legal analysis having thus been established, the methods used must now be described.

The purpose of the study, which is to assess whether a series of statutes and regulations complies with a supra-legislative text, raises no particular difficulty in itself. According to Article 26 of the Vienna Convention of 23 May 1969 on treaties, "*Every treaty in force is binding upon the parties to it and must be performed by them in good faith*". Nevertheless, the content of the Convention does not appear very binding, apart from each country's obligation to comply with a number of major principles. This is not unusual in this type of treaty. We are accordingly dealing here with what has been described in international law as "soft law". This strongly influences the method of analysis chosen. Interpretation of a text in order to assess whether it is being applied properly can generally be performed by a number of methods, which however are not mutually exclusive. This is not the place to describe the different methods, so we have chosen to adopt a somewhat teleological approach that aims to identify the objectives of the text's drafters. The content of the Convention seemed to us to be highly appropriate for such an approach.

The method chosen has caused us to prefer the analysis of written documents to interviews. This does not mean that the latter have not been used in a semi-directive way but rather that they have served primarily for collecting documents and clarifying certain aspects for which documents did not exist or were no longer available. The documents analysed come mainly from official sources, whether legislation or reports and studies. The presentation of the report will follow the recommendations of the Monitoring Group, ie it will give an analytical article-by-article commentary where the provisions concerned so allow, which is not always the case.

Before embarking on this exercise, we thought we should describe the national context and list the main parties involved in doping prevention and control.

The context

The history of efforts to control doping in France rather resembles that of the Council of Europe's involvement in the same field.

The first definition of doping was provided by the Council of Europe's Commission for Physical Education, Sports and Outdoor Pursuits in Strasbourg on 15 January 1963. A few days later, the State

Secretary for Youth and Sport convened a congress on the subject at Uriage-les-Bains, resulting in the adoption of a resolution endeavouring to define doping.

These discussions were followed by the passing of Act No 65-412 of 1 June 1965,¹ which constitutes the first legislative crackdown on doping on French territory (some weeks before, 2 April 1965, the Belgian Parliament had passed the first law on this subject anywhere in the world). During the debates in the National Assembly, the Rapporteur had the following to say about the bill in December 1964²: *“What is serious is that doping is spreading throughout France. If it were only developing among adults or certain professionals, it would perhaps be of only minor importance. Unfortunately, as you have noticed, Mr State Secretary, doping is also becoming widespread among young people and this is the main reason why this bill has been tabled”*.

At the time, the very fact of having "knowingly" taken a drug was a criminal offence punishable by a fine of up to 5000 francs (750 euros) (and by imprisonment of up to one year). Additional penalties consisting of a ban on participating in sporting events for up to 5 years were also laid down. Penalties were also imposed for individuals who "knowingly" permitted the use of doping products or processes and for those who refused to undergo testing.

In a case involving a positive anti-doping check during the 1966 Tour de France, the sportsman appealed to the Bordeaux Court of Appeal against the penalties imposed. In its judgement of 14 May 1969, the Court discharged the racing cyclist on the grounds that it had not been proved that he had taken dope knowingly despite several traces of injections. This decision resulted *de facto* in the act being applied extremely rarely, which in turn led to the passing of a new act in 1989 despite the appearance of a decree of 1 July 1987 which instructed the sports federations to perform controls themselves but which there was no time to apply.

A particular feature of Act No 89-432 of 28 June 1989³ was that it no longer criminalised the act of doping and established for sportsmen convicted of doing so a system that began with disciplinary penalties imposed by the federations and was followed later by administrative penalties. It also set up a national anti-doping commission under the authority of the Minister for Youth and Sport to be responsible, among other things, for proposing amendments to penalties imposed by the federations. The aim was to ensure that sports federations applied the Act correctly without being too lax or too severe.

It turned out that although the Minister or a sports federation could refer a case to the commission, which could even take the initiative itself, the commission actually took action on only one occasion in ten years when it proposed that the Ministry of Sport impose a penalty.

The preventive tasks of the commission were to propose *“ any measure which would prevent and combat doping and ensure equality between all disciplines with regard to controls”*.

In addition, a report was required to be submitted to Government and Parliament each year, something that has never been done. Besides the provisions concerning sportsmen, substantial penalties had been specified in order to make it clear that a degree of sympathy towards sportsmen did not extend to suppliers of doping products. The Act banned the prescription of doping products and provided for penalties of up to two years in prison and €15,000 in fines. There was provision for aggravating circumstances in the case of minors and penalties could be increased to four years in prison. Other, heavier penalties were laid down for those who facilitated or administered doping substances classed as drugs. The prison term was increased to 10 years and the fine to €75,000.

In general, the inadequacies of the 1989 Act were:

¹ Official Journal of the French Republic, 2 June 1965

² Official Journal of the French Republic, National Assembly debates, 16 December 1964, page 6114

³ Official Journal of the French Republic, 1 July 1989

- vagueness about the powers of the administration, the commission and the sports federations;
- limitation of the prerogatives of the National Anti-doping Commission as regards both control of procedures and its powers to act;
- cumbersome and lengthy procedures;
- frequent breaches of procedure noted during control procedures;
- relatively ineffective arrangements for acting against suppliers.

Furthermore, it emerged that no action was taken in 40% of cases where samples proved positive.

Discussion about amending the 1989 Act accordingly started in 1997 before the change in ministers in 1998 and ended in adoption of the new Act on 23 March 1999⁴. During the parliamentary debates, three objectives were put forward as justification for passing a new Act. These were:

- protection of health;
- control of suppliers;
- establishment of a simple, coherent and fair system of administrative and regulatory procedures.

It should be noted that Order No 2000-548 of 15 June 2000 consolidating the Public Health Code (PHC) repealed the Act of 23 March 1999 and replaced it by Articles L.3611-1 to L.3634-5 of the PHC, which reproduces exactly the same provisions as the Act.

The new Act has led to the setting up of a rather complex system. Implementing it has already required the drafting of 11 decrees and 35 implementing orders, albeit not all of equal importance.

The plethora of regulations shows that the preferred choice of French governments is strong State involvement in accordance with national tradition. However, this involvement of the State and its various bodies should not hide the partnership that has been established with the sports movement, particularly the French National Olympic and Sports Committee (CNOSF), with the aim of carrying out joint operations.

This description of the context would be incomplete without a mention of some special features of the system whereby sport is organised in France. The Act of 16 July 1984 organises relations between the sports movement and the State, ie basically the Ministry of Sport. The substantive provisions distinguish two levels of participation in the public servicing of sport, namely approval and delegation.

Approval, which is issued by the Minister for Sport, enables a federation to receive State aid on the grounds that it performs (subject to certain conditions) a public service role. Such approval can extend both to single-sport and to multi-sport federations.

As regards delegation, the French Act considers that the federations' monopoly on the organisation of competitions and the issue of titles constitutes a State prerogative. However, on the occasion of each Olympics, powers are delegated to a single, already approved sports federation, which discharges its tasks under State control and in compliance with international federation rules. Such an arrangement theoretically allows the federations' monopoly to be challenged every four years. In practice, delegation has been withdrawn only from smaller federations and under specific circumstances. However, the existence of this arrangement tends to lead to substantial State control. The aid given to the sports federations is in both money and staff. Over 1600 State officials are made available to the sports federations free of charge. In each federation, these technical executives are headed by a national technical director (DTN) responsible for implementing ministerial policy in agreement with the elected federation bodies.

⁴ Official Journal of the French Republic, 24 March 1999

The partners concerned

A list of the most important public partners concerned is given below.

Public partners

- Ministry of Sport (Sports Directorate, Sub-directorate for Local Action, Office for the Protection of Sportsmen and the Public (DS 5); regional and departmental directorates; establishments)
- Ministry of Justice (Directorate of Criminal Affairs and Pardons, Department of European and International affairs)
- Ministry of the Interior (Directorate-General of the National Police, Anti-Drug Task Force)
- Ministry of Defence (Directorate of the National Gendarmerie)
- Ministry of Economic Affairs and Finance (Directorate-General of Customs and Indirect Taxes)
- Ministry of Youth, Education and Research (Directorate of Youth and Community Education, Directorate of School Instruction)
- Ministry of Foreign Affairs (Directorate of Legal Affairs)
- Ministry of Health (Directorate-General of Health)
- Doping Prevention and Control Council (CPLD)
- National Doping Detection Laboratory (LNDD)
- Interdepartmental Task Force for the Control of Drugs and Drug Addiction (M ILDT)
- medical doping prevention and control units
- Institut de veille sanitaire (Health Watch Institute).

Ministry of Sport (www.jeunesse-sports.gouv.fr)

Before continuing to list the various parties, an indication must be given of the functions of the Ministry of Sport, which is the traditional operator in doping matters.

In organisational terms, the bulk of doping-related tasks are dealt with by Office DS5 (Office for the Protection of Sportsmen and the Public), which comes under the Sports Directorate (Sub-Directorate for Local Action). This office is in charge of sports medicine, which includes medical supervision of the practice of sport and the encouragement of such practice for health purposes. The other priority task is the campaign against doping itself.

This task covers the following:

- preparation and monitoring of statutes and regulations;
- planning and organising doping controls;
- preparation and editing of the list of French pharmaceutical specialities containing doping substances;
- supervision of the National Doping Detection Laboratory (LNDD);
- prevention and treatment policy;
- development of research policy;
- international relations.

This office of around ten persons is responsible for sportsmen's health in the broad sense but also for the protection of users in terms of the safety of sporting practices.

Private partners

- French National Olympic and Sporting Committee (CNOSF): "Sport Health" Foundation;
- sports federations;
- specialist prevention associations such as the service provided by the Freephone number "Ecoute dopage", the Transdisciplinary Centre for Research, Documentation and Intervention regarding Addiction (CREDIT), the National Prevention and Health Education Institute (INPES) etc.

Article 2 - Definition and scope of the Convention

The definition of doping is given in Article L.3631-1 of the Public Health Code:

"It is forbidden for any person, during sporting competitions and events organised or authorised by sports federations or with a view to taking part in them:

- to use substances and processes liable to modify capacities by artificial means or to conceal the use of substances or processes possessing such a property;
- to resort to such of those substances or processes whose use is subject to restrictive conditions where those conditions are not fulfilled."

The above definition of doping entails a limitation that must be stressed. The idea of an event authorised by sports federations requires explanation. This provision of Section 18 of the Act of 16 July 1984 stipulates that the organisation of sporting events (outside the federation framework) is subject to authorisation by the federation concerned when the event is open to registered members and the total amount of the prizes awarded exceeds €3000. It therefore appears that some events which are not open to registered members or where the amount of the prizes awarded is below the threshold cannot be the object of anti-doping checks.

The Act provides that the list of doping products shall be laid down by a joint Order of the Ministers for Sport and Health. The list of products currently regarded as doping agents is given in the Order of 31 July 2003.

The Convention of 16 November 1989 clearly stipulates that the reference list used in each country must be that approved by the Monitoring Group, currently the one laid down by the International Olympic Committee. Furthermore, Decree No 2003-514 of 12 June 2003 publishing the amendment to the appendix to the Convention of 16 November 1989 currently governs the entry into force on French territory of the list drawn up by the Monitoring Group on 12 November 2002.

The Decree of 12 June 2003 therefore incorporates into French law the list of products banned under the Convention. However, the existence of provisions laid down by the Public Health Code, particularly the obligation to adopt an Order for the purpose of fixing the list of banned products (the Order was adopted on 31 July 2003⁵), can lead to discrepancies between the two lists.

The provisions of the French Act refer clearly to the obligation to adopt an Order, even though France's ratification of the Convention means that the Monitoring Group's list must be accepted *in extenso*.

Disciplinary and administrative penalties may be imposed only on the basis of the list resulting from the Order and not of the Monitoring Group's list. There may be differences between the two lists even if the differences are tending to diminish. No case has so far been reported where proceedings have been annulled because of contradictions between the lists. Furthermore, the provisions specifically cover the idea of "*similar substance*" (Order of 31 July 2003) or examples of substances (Decree No 2003-514 of 12 June 2003), which obviously means that the list of banned products is only a basis. Such lack of precision (which is understandable, however) could provide grounds for appeal. Disciplinary law follows (with a little more flexibility, it is true) the principle, well established in criminal law, of "*nulla poena sine lege*". This clearly means that there is a risk of a sportsman failing to be penalised when he has tested positive for a substance that has not been specifically banned. Under criminal law, a dealer in this type of product could similarly argue that the product concerned was not expressly banned.

⁵ Official Journal of the French Republic, 7 August 2003, page 13695

An appeal on this point was even lodged with the Conseil d'Etat and judged in 2001 (Conseil d'Etat, 25 April 2001, *Mouvement de légalisation contrôlée*, No 220746) in order to obtain a declaration that the Order fixing the list of products was null and void. However, the plaintiff was dismissed on procedural grounds, which leaves the question of the provision's legality unresolved.

It therefore seems necessary to amend the Act on this point in order to take as the sole basis the Monitoring Group's list, which is applicable in France by decree.

At the international level, even the IOC's list contains elements which can lead to conflicting interpretations, for example with regard to gluco- corticosteroids and beta-2-agonists, whose conditions of use may vary. Regarding cannabis, leaving the choice to the international federations produces the absurd situation that a federation may fail to penalise a sportsman who has tested positive even where the general provisions on drugs mean that the user has committed an offence. Even if application of the statutory penalties remains theoretical, sporting practice could throw off the constraints of ordinary law by reason of the regulations of certain international federations. Likewise, the distinction between products that can be detected in competitions and the rest leads to a number of question marks about the relevance of such a dichotomy.

Epidemiology

Under this heading, we shall consider the question of how much exact knowledge exists about the doping phenomenon in France.

Despite the job given to the Health Watch Institute of studying cases of doping treated by doctors, no national survey has yet been carried out on the subject. However, during the work leading up to the March 1999 Act, the National Scientific Research Centre (CNRS) was asked to submit a report on doping and sporting practices. That report, which was delivered in October 1998⁶, attempted to analyse the current position as regards doping, particularly the magnitude of the phenomenon, and to indicate the different determining factors. It was found that there were no objective data and it was concluded that "*we know more about opinions concerning doping and the efforts to combat it than we do about doping itself*".⁷

This finding led to the inclusion of certain obligations in the 1999 Act, such as to collect the epidemiological data obtained by doctors. It appears, however, that the doctors' obligation to declare this data is carried out very reluctantly.

To date, two regional studies have been performed on the subject. The first is entitled "Epidemiological survey on doping in sport in schools of the Midi-Pyrénées Region in 1999".⁸ Doping behaviour in sportsmen could be approached in the following manner⁹ (see below).

The second, more specialised study related to sporting practice and the use of psychoactive substances for the year 2000,¹⁰ which only marginally concerns the doping question.

Finally, the French Agency for Health Safety and Health Products (AFSSAPS) selected doping as one of the work topics for the European drug dependency workshops in 2002.

Data are also available from the Freephone number "Ecoute dopage", which supplies an annual progress report containing useful information (even if it is not an epidemiological study). For 2002, callers were 74% men and 26% women. The breakdown by age is as follows:

⁶ National Centre for Scientific Research, collective report: doping and sporting practices, October 1998

⁷ Op.cit.page 7.

⁸ Institut de veille sanitaire, Bulletin épidémiologique hebdomadaire No 42/2000.

⁹ We refer to the study for the methodological aspects

¹⁰ Institut de veille sanitaire, Bulletin épidémiologique hebdomadaire No 15/2003

- children 1.5%;
- adolescents 20.5%;
- adults 78%.

The majority of telephone calls were requests for information (75.27%), requests for help with decisions (12.98%), expressions of personal views (7.92%) and requests for support (very low, 3.83%). The most frequently mentioned sports were bodybuilding (22.87%), cycling (14.37%), athletics (10.56%) and football (9.68%). We should not draw hasty conclusions from these data. However, the large proportion of bodybuilding enthusiasts may be due to the fact that they are mostly individuals with no links to the institutional sporting world where prevention campaigns are regularly held.

As regards the most commonly mentioned products, cannabinoids lead with over 20%, followed by anabolic steroids, nutritional supplements and stimulants (between 10 and 15%). The most frequently mentioned products are creatine, medicines, peptide hormones and narcotics (between 5 and 10%). Corticosteroids, local anaesthetics and beta-blockers are mentioned in fewer than 5% of cases.

In certain cases, calls following a first consultation with a psychologist are forwarded to a standby medical service when therapeutic support is needed. Here the breakdown between men and women is 82%-18%. The branches of sport most often mentioned then are cycling (over 30%), swimming and bodybuilding (about 15%), athletics, riding, football and wrestling (between 5 and 10%).

Doping behaviour in sportsmen by sex and practice of competition
(Midi-Pyrénées 1999)

	Doping or possible doping behaviour declared %	Authenticated doping substances %
All*	8.5	2.4
Boys*	10.6 [‡]	3.8 [‡]
Non-competitors	7.7	3.1
Competitors	12.2	4.1
p [‡]	0.02	0.65
Girls*	6.0 [‡]	0.8 [‡]
Non-competitors	4.6	0.3
Competitors	8.5	1.8
p [‡]	0.01	0.02

*Subjects practising a sporting activity outside PE

‡Boys versus girls: Fisher test for survey data; p< 0.00

†Fisher test corrected for survey data

Article 3 - Internal Coordination

1. Co-ordination of governmental departments

We felt it was necessary to show the trend of appropriations for doping prevention and control and to include a table describing the responsibilities of the various bodies. Appended will be found an outline of the disciplinary procedure governing the testing of sportsmen and sportswomen.

Trend of funding for the prevention and control of doping between 1997 and 2003 in millions of euros (Source: Ministry of Sport)

Year	1997	1998	1999	2000	2001	2002	2003 (estimated)	Difference 2003/1997
Amounts	5,6	6	9,7	17,2	20,6	24,2	24,7	+341,1%

Breakdown of the different legal and administrative responsibilities under the 1999 Act

Bodies	Responsibilities
Ministry of Sport	<ul style="list-style-type: none"> - Organisation of tests - Supervision of laboratory - Monitoring and assistance to sports federations - Monitoring of regional offices - Co-ordination of regional doctors - International relations - Assistance with prevention - Assistance with research
Doping Prevention and Control Council (CPLD)	<ul style="list-style-type: none"> - Prevention - Disputes (eg after the federations) - Research - Advice to authorities on trends to be monitored
National Doping Detection Laboratory (LNDD)	<ul style="list-style-type: none"> - Analysis of samples - Research
Regional Doping and Prevention Control Units	<ul style="list-style-type: none"> - Prevention - Care of sportsmen
French National Olympic and Sporting Committee (CNOSF)	<ul style="list-style-type: none"> - Prevention (Sport Health Foundation) - Medical monitoring of sportsmen for Olympic Games (Medical Commission)
Sports Federations	<ul style="list-style-type: none"> - Medical monitoring of top sportsmen - Disciplinary treatment of positive cases - Prevention

The adoption of the 1999 Act caused the government to issue a decree on the forwarding of information between government departments as part of the war on trafficking in doping products.

This decree, No 2003-581 of 27 June 2003, provides inter alia for a commission on the prevention and control of trafficking in doping products to be set up in each region. In order to make sure that the different departments concerned take part, the commission is chaired jointly by the Prefect and the Public Prosecutor. This clearly demonstrates the desire for collaboration between the administration and the courts. The commission includes a representative of the customs service and of the competition and consumption department and members of the 'police judiciaire' (criminal investigation department) drawn from both the national police force and the gendarmerie, together with a representative of the Ministry of Sport. The chief function of this body is to promote co-ordination between departments and draw up a half-yearly report on anti-doping activities.

The establishment of this commission is a sequel to the setting up under the 1989 Act of regional-level anti-doping units on the basis of Ministry of Sport Instruction No 91-036 dated 12 February 1991. This instruction was not binding on the other ministries. The new provisions should result in improved coordination since the regional units were operating in a rather uncoordinated way.

The novelty of this instruction should not hide the fact that joint meetings between the various departments were held both at central level and in the regions. Meetings could cover specific matters or more general points. As regards prevention, for example, meetings of the various partners from the government departments and from the sports and voluntary associations were held on the initiative of the Inter-departmental Drug and Drug Addiction Task Force.

Action by police forces

It should be made clear that police functions are exercised jointly on French territory by the national police itself in urban areas and by the gendarmerie in rural areas.

Drug-related matters are dealt with at the Ministry of the Interior by the Drug Control Task Force (MILAD) attached to the National Police Directorate. This body coordinates the different branches of the police. There is no special unit in the field that deals with traffic in doping products but the various drug squads also handle doping matters. In Paris, the drug squad consists of a 2-man unit responsible for overdose deaths and doping matters. During 2000, 27 cases were recorded on national territory. They related both to thefts of products and to sales of banned or controlled products. Some of the cases arose out of customs checks.

As regards prevention, the doping question is covered during talks given by the 300 anti-drug police instructors. In 1998, the Ministry of the Interior took part in a prevention operation in conjunction with the Ministry of Sport.

Operational coordination in important cases takes place through the Central Office for the Suppression of Illicit Trafficking in Drugs (OCRTIS) with representatives from the gendarmerie and customs. This is a specialised department of the 'police judiciaire' with countrywide responsibility which acts as a clearing-house for all cases under investigation. In complex cases where the help of investigators from several regions is required or where there are international implications, this department is responsible for coordination of the investigation under the authority of the law officer handling the case.

Action by the customs services

Action by the Directorate-General of Customs and Indirect Taxes regarding doping matters forms only a very small part of its activity. However, as in criminal matters, those cases that come to light receive considerable publicity that could be described as disproportionate considering both the size of the traffic and the work of the customs services as a whole. Customs policy does not specifically target doping products. The latter are simply goods like any others and as such subject to general rules (Customs Code) and specific rules (Public Health Code).

Trend of seizures Customs by since 1998

(Directorate-General of Customs)

Year	Number of finds	Numbers of Products seized
1998	48	49 523
1999	40	26 348
2000	76	618 577
2001	100	937 706
2002	65	45 394

Over half the finds were made during import checks, particularly at Paris-Charles de Gaulle airport. Generally speaking, finds are more frequent in Ile-de-France and the North East region. Seizures resulted from controls on packages sent by post in nearly 40% of cases. For example, one package

checked contained over 8000 anabolic steroid pills addressed to a sports coach. The most frequently seized substances are metandienone, nandrolone and testosterone. Clenbuterol and ephedrine are more rarely found. The supply of products via the Internet appears to be growing, and particularly of products from the United States, a country where the rules are particularly flexible and even non-existent. What we are witnessing, it seems, at least as regards seizures, is the replacement of veterinary products by products with a more specifically sporting use. At that level, the most affected discipline is weightlifting.

Where an important find is made the matter is referred to the Public Prosecutor and may lead to co-operation with the police.

Directorate-General of Competition, Consumption and Suppression of Fraud

This directorate comes under the Ministry of Economic Affairs and Finance and has responsibilities under the Consumption Code. Its staff have investigative powers, particularly regarding food products. Article L. 221-1 of the code states: *"Products and services must, under normal conditions of use or under other conditions that can reasonably be foreseen by a professional, possess the safety which can legitimately be expected and not harm the health of individuals."*

Ministry of Justice

No exact statistics on doping cases exist at Ministry of Justice level. Criminal offences connected with doping come under the jurisdiction of the criminal courts. These cases are categorised as assaults on health but this description covers both drug offences and other infringements of public health. It is, in fact, not unusual for judgements in doping cases to mention both general health legislation (trade in medicines) and more specific legislation on doping. All these texts have been consolidated since 2000 in the Public Health Code. If we take the latest data, represented by the *"Other offences against public health"* category, we obtain the following:

Convictions for offences: other offences against public health

(Source: Ministry of Justice)

Year	1997	1998	1999	2000	2001
Other offences against public health	639	645	824	713	496
Total convictions for offences	439 138	449 893	454 131	446 815	422 549

For the year 2001 (the last year for which data are available), offences against public health (excluding drugs) account for less than 0.12% of criminal cases. This means that cases of doping represent an even lower proportion, although with the present data it is not possible to measure their proportion. For the courts, the volume of cases is therefore extremely limited. Paradoxically, the very small volume of cases receives great publicity. Despite involving equivalent quantities of products, drug cases arouse much less press interest. In cases of doping, media coverage comes as much from court reporters as from sports journalists. The trial in the Festina case held in Lille from 23 October to 7 November 2000 was followed closely by the media. Judging by what certain journalists wrote, the ups and downs of the hearings were as exciting as the various stages of the Tour de France! Other cases revealed by the press have aroused interest, e.g. those of Poitiers in 2001 and Perpignan this year, both of them concerning networks that supplied doping products.

2. Governmental sport authority

It appeared to us that under the Convention the governmental sport authority was the Doping Prevention and Control Council, even though, as we have seen, the Ministry of Sport retains important

prerogatives and the concept of "governmental authority" does not correspond exactly to the Council's institutional position.

Doping Prevention and Control Council (CPLD) (www.cpld.fr)

The CPLD is an independent administrative authority, ie it is invested with the power to make regulations whilst remaining independent of the government both in its organisation and in the way it appoints its members. The creation of this authority in 1999 arose from the desire not to expose the system for combating doping to accusations of bias on the grounds of its links either with the sports movement or with the government. This category of regulatory body has developed in France since the early 1970s and has grown strongly since the start of the 1990s in highly varied fields (monitoring of food products, health products, competition etc).

Its powers are defined in Article L 3612-1 of the PHC : *"The Doping Prevention and Control Council, an independent administrative authority, participates in the definition of policy on the protection of sportsmen's health and contributes to the regulation of doping-control actions."*

The CPLD has the following members:

Three members of the administrative and ordinary courts:

- a member of the Conseil d'Etat, chairman, appointed by the Vice-President of the Conseil d'Etat ;
- a judge at the Court of Cassation appointed by the President of that court;
- a counsel at the Court of Cassation appointed by the State Counsel at that court;

Three prominent individuals with qualifications in the fields of pharmacology, toxicology and sports medicine appointed respectively by the:

- President of the National Pharmacy Academy;
- President of the Academy of Science;
- President of the National Academy of Medicine;

Three prominent individuals with qualifications in the field of sport:

- a top sportsman/sportswoman appointed by the President of the French National Olympic and Sporting Committee;
- a member of the board of the French National Olympic and Sporting Committee appointed by its president;
- a prominent person appointed by the chairman of the National Consultative Committee on Ethics for the Life and Health Sciences.

The CPLD has services composed of a Secretary-General, two "chargés de mission" and three secretarial staff. A university professor acts as scientific adviser.

The CPLD's budget for 2002 amounts to €728,696. The budget does not include the cost of tests and analyses, which are met by the Ministry of Sport. The CPLD has been able to obtain financial assistance from the European Commission in respect of certain activities. As an independent administrative authority, the management of its budget is not subject to *a priori* auditing and is the responsibility only of its chairman.

A scientific unit exists for the coordination of fundamental and applied research in the fields of sports medicine and doping. This unit collects the data which are so seriously lacking and whose absence has so far prevented the magnitude of the doping phenomenon in France from being exactly ascertained. It forwards the information which it collects to the Health Watch Institute, particularly information it receives from the medical doping prevention and control units. The CPLD can also make proposals to the Minister for Sport concerning measures to combat doping. It can do the same with regard to the sports federations.

The CPLD is required to submit a progress report to Government and Parliament each year and is consulted on all proposed legislation on the fight against doping. In this connection, it has examined 36 opinions since 1999 whose principal subjects were the following (incomplete list):

- composition of the list of doping products;
- functioning of the medical anti-doping units;
- frequency of medical examinations in connection with the monitoring of top sportsmen;
- test procedures;
- training of doctors to perform tests;
- disciplinary rules of the sports federations;
- creation of the new management structure for the doping control laboratory;
- swearing-in of Ministry of Sport testing personnel;
- creation of a standard test form;
- appointment of persons as members of the federations' disciplinary bodies;
- reference list for the pharmacological classes of doping substances and methods;
- forwarding of information between authorities as part of the fight against the traffic in doping products.

In this report we shall deal only with the CPLD's powers in respect of prevention, which will be discussed in detail in the section devoted to Article 6 of the Convention.

Communication, information and advice

The CPLD can require of "competent government departments, federations, sports groups and establishments practising physical and sporting activities all information concerning the preparation, organisation and conduct of sports training, competitions and events". The Act also provides that the CPLD must be informed about testing activities, cases of doping communicated to the authorities or to the sports federations and penalties imposed by the latter. This obligation to inform is not subject to penalties. The only means of pressure available to the CPLD therefore appears to be publication of the annual report.

In addition, the CPLD possesses the power to demand that sports federations use the prerogatives that they enjoy under the Act. This option has been employed on two occasions. In one case, the federation concerned refused to consider cannabis to be a doping substance on the grounds that doing so would raise legal difficulties. The second case concerns a federation that considered that intervention by the International Federation excused it from applying French law.

Enforcement

One of the reasons for setting up the CPLD was to ensure that it possessed the power to enforce rules in order to be in a position to impose penalties on sportsmen where the federations had not done their job. It is also possible to impose penalties on sportsmen who do not have a licence from a French federation either because they do not normally take part in competitions or because they are foreigners. Action by the CPLD takes place in the following cases:

- lack of penalty imposed within the time limit set by a federation;
- inappropriate penalty;
- extension of a penalty to other sports;
- sportsman/sportswoman not possessing a sports licence in France.

Penalties are, of course, administrative in nature and must be imposed with due regard for the rights of the defence. They involve a temporary or permanent ban on taking part in sporting events and competitions in the case of unlicensed members. Similar penalties are incurred in the case of licensed members, who may be temporarily or permanently banned from the profession of sports coach.

The disciplinary procedure available to the CPLD is governed by Decree No 2000-274 of 24 March 2000 (incorporated in the Public Health Code). When a matter is referred to the CPLD, the sportsman (or person having parental authority in the case of a minor) is informed by registered letter or recorded delivery. The letter states the basis for referral of the matter to the CPLD, together with the complaints made and the rights available to the sportsman for submitting his defence, particularly the right to call for a second analysis or set of analyses. The federation concerned is alerted in the same way and may submit comments. The sportsman may be assisted by one or more defenders of his choice, if need be by an interpreter, and may consult the entire dossier on the spot. In addition, the sportsman may ask to undergo a biological assessment by one or more persons on a list of recognised experts. The assessment costs are chargeable to the CPLD. As soon as a matter is referred, the chairman appoints a rapporteur (who may be himself), who requests sight of all useful documents - he has no powers of compulsion - and then draws up a report. During the hearing, the rapporteur gives his report orally. The sportsman or his defenders speak last. Hearings are not public unless so requested by one of the parties beforehand. The decision taken must be accompanied by reasons and is announced to the party and federation concerned and to the Ministry of Sport. Disciplinary decisions may be published in the Official Journal of the French Republic (this has happened in four cases considered exemplary), in the Official Bulletin of the Ministry of Sport or in the bulletin of the federation concerned. They are also available on the CPLD's web site (www.cpld.fr), except in cases of acquittal. Certain details which could infringe the right to privacy or medical secrecy may be removed.

Between June 2000, when the disciplinary procedure was introduced, and 30 June 2003, the CPLD delivered 192 decisions relating to 38 sporting disciplines. The sports most concerned have been cycling, bodybuilding, weightlifting, athletics, power lifting and rugby. The higher proportion in the case of bodybuilding, weightlifting and power lifting is explained by the fact that, in the absence of an appropriate federation, the CPLD has to give a direct ruling.

79 of the total number of judgements delivered concerned foreign sportsmen.

The measures taken were:

- permanent ban;
- 139 temporary bans (one month to three years);
- 6 decisions to extend a ban;
- 43 acquittals.

Appeals against CPLD decisions must be made to the Conseil d'Etat. To date, the only two appeals made have been rejected by the court. Three appeals are pending.

Article 4 - Measures to limit the availability and use of banned doping agents and methods

Measures to limit the availability and use of doping substances are covered not only by the Doping Act but also by the legislation on medicines and poisonous substances, the fight against drugs, the safety of products supplied to consumers and, of course, the illegal importation of products. A distinction will be drawn between provisions falling under the Act of 23 March 1999 and the other more general provisions.

1. Provisions of the Act of 23 March 1999 (incorporated in the Public Health Code)

The Act applies in three fields: criminal matters, criminal procedure and pharmaceutical establishments.

Criminal provisions

The criminal provisions (Article L.3633-2 of the Public Health Code) represent a logical continuation of the previous Act.

Opposition to the exercise of the functions of doctors and accredited officials and disregard of a ban issued by the CPLD are punished by a sentence of six months in prison and a fine of €7,500.

The act of prescribing doping products or procedures and offering, administering, applying and facilitating them or encouraging a sportsman to use them and attempts to commit such offences are punishable by five years in prison and a fine of €7,000. These penalties are raised to seven years in prison and a fine of €1,500,000 when the acts are committed in a group or against minors. The concept of organised groups did not appear in the previous Act and penalties have thus been increased.

The heaviest penalties relate to trafficking in all products and not just drugs. Additional penalties are incurred. These are:

- confiscation of the products, substances, objects and documents which were used to commit the offence or which facilitated it;
- display or circulation as laid down in Article L.131-35 of the Criminal Code (at the expense of the offender provided that the costs do not exceed the amount of the fine incurred);
- closure for a year of one or more establishments belonging to the business used to commit the offence and belonging to the offender;
- a ban, as provided for in Article 131-27 of the Criminal Code (for a misdemeanour it may not exceed five years), on practising the professional or social activity in connection with which the offence was committed;
- a ban, as provided for in Article 131-27 of the Criminal Code (for a period not exceeding five years), on holding a public office.

What is new compared with the previous Act is the possibility of convicting legal entities under criminal law for these offences (Article L.3633-6 of the Public Health Code). The penalties incurred are fines, additional penalties and the closure for a year or more of the establishment or establishments which served for the commission of the offence and which belong to the legal entity convicted. The penalty of a fine may be imposed for all the offences already described, including opposition to a test or disregard of an administrative penalty. On the other hand, additional penalties and the closure of an establishment concern only acts for which the heaviest penalties are imposed. Under Article 131-38 of the Criminal Code, the amount of the fine may not exceed five times that imposed on individuals, ie under this Act a maximum sum of €750,000, if the offence concerns minors. The additional penalties mentioned in Article 131-39 2°, 8° and 9° of the Criminal Code may be imposed (Article L 3633 -5 of the Public Health Code). These consist of a ban on a permanent basis or for a period of five years or more on practising one or more professional or social activities, confiscation of the object which served for the commission of the offence and the publicising or circulation of the decision by the press or any other means of audio-visual communication.

Right of inspection

Rather exceptionally, the Act of 23 March 1999 gave powers of investigation to specially approved and sworn officials of the Ministry of Sport.

The previous legislation contained similar provisions that were not really applied in practice. The exceptional nature of this power granted to certain Ministry of Sport officials requires some explanation. It does not concern sampling activities, which are carried out by doctors (see below), but the power to look for information and even products. The powers conferred by the Act, which are akin to those available to police and customs officers, are clearly not part of the normal tasks of

Ministry of Sport officials. What we can say is that officials do not use these new powers. However, the publication of Decree No 2003-581 of 27 June 2003¹¹ concerning the forwarding of information between authorities and the creation of regional commissions should facilitate the activities of Ministry of Sport officials.

Officials responsible for investigations must be approved but, unlike doctors, their approval does not have to be renewed. Furthermore, they are not required to undergo any special training even though the administration can always compel them to do so. The new legislation is less far-reaching with regard to the powers conferred on approved Ministry of Sport employees. The previous provisions under the 1989 Act drew a distinction between public places (in which sporting events and competitions were held) where officials had a right of inspection and other places that required a judge's order if they were to be inspected. These provisions, which were similar to those applying in customs and fiscal matters, have now disappeared - quite logically, because they had never been applied.

In fact, in order to convey an accurate picture of the different parties responsible for investigations, it is necessary to add 'police judiciaire' officers acting under Criminal Code provisions to Ministry of Sport employees. It is actually they who carry out the investigations by reason of their powers and complete mastery of methods of work, as well as the similarity of that work to the fight against drug trafficking. In addition, contrary to the case of Ministry of Sport employees, there is no restriction regarding the places where they can act because, as officers of the 'police judiciaire', they have a blanket authorisation to find the commission of offences.

Nevertheless, investigations by approved Ministry of Sport officials concern *“places, premises, enclosures, installations or establishments where a competition or event organised by a federation, or training preparatory thereto, takes place, as well as establishments where physical and sporting activities as mentioned in Section 47 of Act No 84-610 of 16 July 1984 are practised”*. These provisions cover all establishments for physical and sporting activities required to make a declaration to the authorities. However, the text excludes the home or parts of premises serving as the home. The officials may gain access to those places and also to their annexes between 6 am and 9 pm or at any time if they are open to the public or a sporting competition or event or training preparatory thereto is in progress. In practice, this means public sports premises most of which belong to communes. Approved employees may *“request a sight of any useful paper or document, make copies of it and obtain the comments of the persons concerned”*. One additional clarification must be made concerning doctors, who cannot only perform samplings but can also, at least in theory, look for information.

Before each inspection, in order to ensure that operations are overseen by a judicial authority, the Public Prosecutor must receive notice that an operation to investigate an offence is to be conducted and he may oppose it. Seizures may be made if authorisation is given by the President of the Regional Court or by a specially delegated member of the court.

Pharmaceutical establishments

It is stipulated that the establishments mentioned in Articles L.3613-3 (pharmaceutical establishments) and L. 5142-1 (establishments for the preparation and wholesale sale of veterinary medicines) of the PHC must help in the fight against doping. These legislative provisions were to have been the subject of an implementing decree that has so far not been adopted. In fact, the legislation on pharmaceutical products is already helping to reduce the circulation of medicines with the aim of preventing their use by roundabout means. Besides the numerous texts regulating the movement, sale and issue of medicines, Article R.5015-2 of the Public Health Code states: *“The pharmacist shall carry out his task with respect for human life and the human person. He must help to inform and educate the public in health and social matters. He shall contribute, in particular, to the fight against drug addiction,*

¹¹ Official Journal of the French Republic, 29 June 2003, page 10996

sexually transmitted diseases and doping.” The directions enclosed with medicines generally indicate the presence of doping substances. The Vidal registered[®] dictionary, which records all pharmaceutical specialities delivered on French territory, includes a list of doping products plus the Order listing doping substances and methods.

2. Other statutory provisions

Doping substances may be medicines and/or drugs. Notwithstanding existing doping legislation, it appears that some provisions can therefore be applied in addition to, or in place of, the Act on doping. It is, in fact, by no means unusual for judgements in this type of case to refer also to the provisions of the Public Health Code that relate to legislation on medicines and doping products (Festina case). It may even happen that reference is made not only to the Public Health Code but also to the Criminal Code (Poitiers Criminal Court, 31 May 2001).

The Criminal Code provisions are contained in Articles 222-34 to 222-48-1 and concern drug trafficking. For traffickers they lay down penalties of up to €7,500,000 in fines and 30 years in prison. Lesser penalties are imposed on users by Articles L.3421-1 to L. 3424-5 of the PHC. These are a year in prison and a fine of €3750 accompanied by a court order to seek treatment. The purely punitive measures are seldom used.

The Public Health Code also contains clauses concerning poisonous substances and preparations, which include narcotics, psychotropic agents and medicines. Disregard of these provisions, which are laid down in Articles L. 5132-1 to L. 5432-1, is punishable by a fine of €3750 and two years in prison

The Customs Code provides for controls on the importation, and even for the banning, of substances and products subject to particular legislation or regulations (Article 38). Controls may be carried out within a radius of 20 kilometres from the borders (in certain conditions up to 60 kilometres). Controls can also be carried out throughout the whole of French territory in offices and warehouses subject to customs surveillance or in cases where someone is caught in the act. The severest provisions provide for imprisonment for up to 10 years, confiscation of the offending sums or of a sum in lieu when it has not been possible to order seizure, and a fine of between one and five times the sum involved in the offence.

Article 5 - Laboratories

As a result of the entry into force of the first doping Act in 1965, France possesses a sample-analysis laboratory. This has always operated independently without being attached to another body such as a university or hospital. It has accordingly operated in a special way. It initially functioned according to the rules of an association governed by the Act of 1 July 1901, the Association for the Development of Physico-Chemical Analysis Methods (ADEMA). After the second Doping Act came into force in 1989, the laboratory took the form of an ‘agency of economic interest’ (Groupement d'intérêt économique) governed by Section 21 of the Act of 15 July 1982. The agency's members were: the State, represented by the Minister for Sport, the French National Olympic and Sporting Committee, the National Sport and Physical Education Institute and the ADEMA, which managed the former laboratory. The adoption of the 1999 Act and the Minister's desire for a better-structured organisation led to the creation of a public corporation following the publication of Decree No 2001-1368 of 28 December 2001. This choice shows clearly the political will of the Ministry of Sport to set up a reference laboratory through State financial involvement.

The laboratory's tasks are defined in the decree setting it up and include, besides the analysis of samples, research intended to adapt testing to the various developments, the exploitation of those developments and the perfecting of new ways of detecting the different doping products and methods. The laboratory is also required to supply technical assistance for preventive activities and to perform analyses for overseas authorities and for authorities of foreign States, the International Olympic

Committee, National Olympic Committees, foreign sports federations, all international agencies and legal authorities.

The exact title is " Laboratoire national de dépistage du dopage" -- LNDD (National Doping Detection Laboratory) and its headquarters is at Châtenay-Malabry, south of Paris. The laboratory is administered by a board of 14 members of whom seven are representatives of the State (two appointed by the Minister for Sport, three appointed by the Ministers for the Interior, Health and Research, the chairman of the Interdepartmental Task Force for the Control of Drugs and Drug Addiction and the chairman of the CPLD), five qualified public figures appointed by the Minister for Sport (two of whom are appointed on a proposal by the CNOSF chairman) and two elected representatives of the staff. Besides the board, there is an 11-member scientific guidance committee. Effective responsibility for the laboratory is in the hands of a director who is also a university professor.

Resources

The budgeted staff of the laboratory for 2003 is 40, which includes to the creation of two new posts. The bulk of the laboratory appropriations come from a Ministry of Sport grant amounting to €4.3 million for the year 2003, ie a 6.3% increase over one year. Enlargement work has increased the laboratory area by 650 square metres and should be finished in July 2003.

The Act limiting the working week to 35 hours means that the laboratory has to be closed for one month a year in two periods of two weeks (summer, winter).

Conversion of the laboratory into a public corporation has the advantage of giving the structure a definite permanence, particularly as regards resources.

Analyses

As regards analyses, the laboratory is accredited by the IOC and has conformed to norm EN 45001 since 1 May 2001, which necessitated considerable work during the year 2000. This long period of work compelled the laboratory to postpone the analysis of some of the samples. The period concerned extended from August 2001 to February 2002. The average analysis time is now 12 to 20 days.

Until 2002 the laboratory undertook the analysis of samples from Austria (500 samples per year). The laboratory is still continuing to analyse samples from Luxembourg (around 300 per year). A study in 2001 estimated that the cost of an analysis varied between about €137 and €180.

Every year, appropriations are set aside for the renewal of equipment. For 2002, these appropriations amounted to €260,671, which is less than the budgeted amount of €422,144. The difference is due to the delay in the work but this difficulty should be offset in 2003.

The maximum analysis capacity of the laboratory is 8800 samples per year, corresponding to about 800 samples per month over a period of 11 out of 12 months. The sampling kits used are of the Versapack (now being phased out) and Berlinger types, the latter being the only ones that will survive in the long term. The gradual transition is explained by the need to train doctors on the new equipment.

The laboratory processes only samples resulting from tests by State authorities or international federations.

The analysis methods used by the laboratory include:

- gas chromatography coupled or not with mass spectrometry;
- gas and liquid chromatography coupled with mass spectrometry in tandem and multi-step ;
- isotopic-ratio mass spectrometry which can distinguish between endogenous and exogenous origin.

As there is no general methodology for the isotopic detection of certain substances of low molecular weight, a case-by-case method is currently used.

Non-computerised processing of samples with a view to detection of EPO means that the laboratory operates flat out on this type of analysis, ie with about 400 samples per year.

Research activities

The laboratory's research activities have caused it to employ a urinary method of detecting EPO. This method has been passed on to the laboratories in Sydney (2000), Lausanne, Barcelona, Oslo, Berlin, Los Angeles and Kreisha (2001), Moscow, Madrid, Athens, Tunis and Bangkok (2002). Three studies are currently being performed on EPO:

- kinetic study of urinary EPO in man;
- study of hypobaric exposure on iso-electric profiles of urinary EPO;
- study on the *in vitro* differentiation between omega and NESP type recombinant urinary EPO and natural EPO.

A programme also exists aimed at developing general and/or specific methods of detecting modified haemoglobin. This programme has three main thrusts:

- development of a general method via electrophoresis;
- development of a general method by steric-exclusion chromatography;
- development of specific methods of characterisation by mass spectrometry.

The laboratory has initiated research procedures aimed at providing the quickest possible answers to international requirements (list of IOC/AMA products, ISO standard 17025).

Various studies are being carried out in this connection:

- studies of urinary excretion;
- detection and confirmation of stimulants;
- detection and confirmation of beta-blockers;
- detection and confirmation of anabolic steroids;
- investigation of more robust analytical instruments with a view to high-sensitivity detection by mass spectrometry;
- detection and confirmation of hydroxyethylamidone.

Research work regularly appears as scientific publications in international magazines.

Article 6 - Education

We decided to consider that the term 'education' should be understood in the broad sense, ie as also including preventive aspects. The special feature of the French arrangements is the large number of contributors to the prevention process. Before making an inventory of the programmes conducted by the main parties, we therefore felt it necessary to cover the question of teachers.

Teachers in the field of physical activities

Some details must be given about the different parties involved in physical and sports education. Both for training and for recruitment, a distinction must be drawn between the different categories of personnel. At Ministry of Sport level, sports teachers are responsible in capacities such as technical adviser or even as national technical director for seeing that ministerial policy is implemented by the sports federations. These career paths differ completely from that of physical and sports education instructors who teach in lycées and colleges and who are not authorised to act in the federation framework. There are also officials who work for local authorities (local advisers for physical and sports activities, local instructors and local operators). The latter implement the local sports policies that result from collaboration between different local authorities (region, département, commune) and local sports movements.

In the private sector, sports instructors are employed by businesses, whether profit-making or not. It should be noted that the profession of instructor is highly regulated and is subject to the possession of a diploma. Unlike civil servants, many of whom followed the university course in the science and technique of physical and sports activity sponsored by the Ministry of Youth and Education, sports instructors are trained by the Ministry of Sport by means of a vocational course leading to State and vocational certificates.

This account of the different professional pathways shows the great complexity that exists in the training of people intending to work in sport and thus the great disparity in studies concerning the doping question. With regard to the diplomas of sports instructor (1st, 2nd and 3rd class), the doping question is not explicitly required by the Order of 30 November 1992 – which lays down the testing programme – to be included in training programmes. It could be included in connection with the biological or human sciences but this choice is for the trainers alone.

The situation is identical in the case of university degrees. A student who qualifies to teach physical and sports education may very well never have had any specific instruction concerning doping.

In general, specific training in the various aspects of doping suffers from a lack of systematisation and harmonisation, despite the numerous facilities available (establishments of the Ministry of Sport and the Education Department).

Ministry of Sport

The Ministry of Sport's role in prevention matters is evolving. Past prevention operations consisted of the introduction together with the CNOSF of the 'teaching kit' in 1998 (see below) and the financing of an information roadshow. The bus used for this roadshow was arranged in co-operation with the Interdepartmental Task Force for the Control of Drugs and Drug Addiction (MILDT), the French Health Education Committee (CFES), the Regional Council and Regional Directorate for Youth and Sport of Provence-Alpes-Côte d'Azur and the association "Centre for Research, Documentation and Cross-disciplinary Action concerning Addiction" (CREDIT). The purpose of this preventive tool is to make teenagers and pre-teenagers aware of the complexity of risk behaviour (doping, drug addiction, consumption of psychoactive substances, violence, attempted suicide etc). The bus is made available free of charge to regional and departmental youth and sports directorates, sports federations, schools and town halls. In 2001, 10,845 people took advantage of its visit. The Ministry's grant came to €47,260. The bus is used in connection with majorsports events for prevention campaigns in schools, training centres and associations.

The Ministry of Sport has gone from direct action to providing financial support for operations organised by other bodies. This is fully in line with the content of the 1999 Act and the creation of the Doping Prevention and Control Council (CPLD).

Since the 1999 Act, the Ministry of Sport has had the benefit of medical advisers attached to the regional directors and responsible for co-ordinating the different aspects of ministerial policy on medical matters. They constitute an important link in the fight against doping, particularly as regards prevention.

Doping Prevention and Control Council (CPLD)

For the sake of greater clarity, we have preferred to describe the prevention functions of the CPLD here rather than in its proper section.

The title spells out its responsibilities: the Council has clearly a preventive function. Its purpose is to create "*the conditions that most favour the harmonious development of prevention initiatives*". Prevention must be understood in its broad sense, ie as encompassing:

- research, in respect of which it has been given three tasks;
- collection and processing of information on doping;
- performance of studies and provision of opinions;
- co-ordination of fundamental and applied research.

On the educational level, the Council has itself conducted actions such as the most well-known one "*Et toi le dopage*", aimed at school pupils and at students on sports courses. It consists of a series of three lectures/debates led by a specially trained speaker. 707 series were held in 2002 and the same number is planned for 2003. This operation has received aid from the European Commission and the business foundation "*La Française des Jeux*" and has had the participation of the French Sports Medicine Society.

Another project entitled "*La règle du jeu*" has been carried out under a partnership with the business foundation "*La Française des jeux*". It involves an appeal for a project on the theme of doping prevention.

Activities in the medical field are more varied. For example, the situation of doctors practising at training centres for professional sportsmen and in clubs or professional teams caused the Council to set up a working group in March 2001 to study their situation, particularly having regard to their professional independence. The group's discussions resulted in the creation of a diploma in specialised complementary studies in sports medicine, requiring two years' full-time study (Order of 20 June 2002).

To the same end, the Council established a sports physiotherapists/masseurs commission in June 2002.

As regards research, the Council has noted that sports-medicine research is relatively limited in France. Five programmes with different partners have been started on the following subjects:

- differentiation of endogenous and exogenous cortisol for detection purposes by isotopic carbon analysis (National Scientific Research Centre);
- identification of disturbances of the somatotrophic function caused by the abuse of growth hormone (National Health and Medical Research Institute);
- factors associated with the declared taking of doping substances in children and adolescents (Robert Debré Hospital);
- adolescent sportsmen and doping behaviour (Rheims University);
- long-term effects of iron supplements on mortality and morbidity in a population of about 400 top cyclists (National Health and Medical Research Institute, University Hospital Centre, Rennes).

French National Olympic and Sports Committee (CNOSF): "Sport Health" Foundation (www.comite-olympique.asso.fr)

The origin of this foundation, which constitutes a department of the CNOSF, goes back to September 1997 when its creation was decided on following a discussion by the CNOSF Board. In July 1999, the department was converted into a foundation under the aegis of the Fondation de France, allowing it to receive funds on a business sponsorship basis.

The aims are to:

- inform and warn practitioners of sport and their supervisors about the dangers of doping;
- raise awareness of good sporting practice on the physical, ethical and behavioural levels;
- mobilise all parties involved in the sports world and make them aware of their responsibilities;
- bring together and put into practice the different public and private initiatives.

The public aimed at by the various projects is extremely broad, including as it does practitioners (young people in particular), families, executives, instructors, teachers and members of the medical and paramedical professions.

The prevention programmes implemented by the foundation are varied. The actions carried out by the "Sport Health" Foundation are:

- development and supply of teaching tools;
- updating of the teaching kit in co-operation with the Ministry of Sport;
- making a travelling exhibition available to 75 regions and departments, using CD-ROMs and brochures;
- production of a pack of cards on the theme of prevention and health;
- production of a prescription 'wallet' for top athletes;
- organisation of symposia, groups of future sports hopefuls, training sessions;
- prevention actions within the federations;
- raising awareness in the medical and paramedical professions;
- responsibility of the Education and Ethics section of the CAFDIS international site.

One of the first actions was to develop a teaching kit in collaboration with the Ministry of Sport. This kit, 11,000 examples of which were distributed from 1998 onwards, consisted of: a video cassette describing the path followed by a top sportsman, an audiocassette of an interview with a doctor, a CD-ROM, a doping-prevention guide, a "Parcours sans faute" fan, a "Sport Net" booklet, a booklet about the travelling exhibition and details of the "Ecoute dopage" service. It is planned to repeat this operation during the coming months but using CD-ROMs only.

It is not possible to give details of every operation but those that appear the most significant can be outlined.

The travelling exhibition, which visited nearly all French regions in 2002-2003 and is estimated to have cost €150,000 (60% funded by a business foundation), has been highly successful, taking into account the number of times its presence was requested (even if the complete results of the assessment are not yet in). It consisted of several panels accompanied by CD-ROMs.

The creation of a network of voluntary lecturers and organisers is part of a longer-term approach since it is important to provide sports clubs with resource persons able to lead a conference on doping. The network has been operating since the year 2000 and has 230 qualified persons, 70% of them doctors. Every year the organisers get together to report on the actions taken and future directions. The 2001 report shows that over 63% of lecturers had spoken at least three times during the year. The greatest number of talks took place in schools (35%). 18% of cases concerned a lecture open to all and 12% a sports club.

In March 2002, a national symposium was organised on the theme "*All concerned*". It brought together organisers/lecturers, regional doctors working for the Ministry of Sport and voluntary-association leaders.

During 2003, an information programme for dispensing chemists has been launched as part of the continuous training of pharmacists. This project has received Ministry of Sport funding and is taking place in collaboration with the Technical Inter-pharmaceutical Union for Continuous Training (UTIP). By organising 60 meetings throughout French territory it is hoped to be able to raise the awareness of 6000 of the 22,000 pharmacists, ie about one third of all dispensaries.

Freephone number "Ecoute dopage" (0800 15 2000)

This service, which has its location in Montpellier, was set up on 24 November 1998 and is run by a non-profit association governed by the Act of 1 July 1901. It is a telephonic listening and advice service operating free of charge. It receives a grant from the Ministry of Sport (the grant for 2002 was €196,000) and aid from the France Telecom Foundation, which bears the cost of the telephone subscriptions. The service operates free of charge from 10.00 to 20.00 hrs Monday to Friday.

The functions of the service are to:

- offer a listening service, information, help and guidance to anybody concerned about doping;
- break the silence surrounding the taking of energising or doping products in sporting circles;
- break the isolation of sportsmen confronted by doping;
- help to initiate or support processes of change in behaviour;
- facilitate contacts with qualified persons or institutions in accordance with requests;
- understand in all its complexity the use of energising and psychoactive products of potential danger to sports populations;
- act as a social observatory of at-risk conduct associated with physical and sporting practices.

From its establishment until the end of 2002, the service received 34,221 calls dealt with as against a total of 62,000 calls. For the year 2002 alone, 8834 calls were forwarded (see the analysis of calls in the passage on epidemiological data, above). Users learn about the service mainly by the following means: television (29%), the press (23%), posters and booklets (12%), Internet (8%), word of mouth (6%) and health professionals (5%). The other sources represent less than 5% of callers each.

In order to publicise this service, a range of information and communication products was launched for 2002 with the creation of a presentation booklet, a plastic card (credit card style) with an appropriate holder, and a small poster.

With regard to collaboration, it is planned to step up work with the medical doping prevention and control agencies in each region. The telephone service should make these agencies better known and guide sportsmen needing care to them.

This service is aimed as much at prevention as at providing knowledge about doping. It can also supplement any actions carried out within the sports movement.

Interdepartmental Task Force for the Control of Drugs and Drug Addiction (MILDT)

The task force, whose function extends beyond doping itself, organised a seminar on the themes of young people's sporting practices and at-risk behaviour in collaboration with the Ministry of Sport in 2000. Its position on doping is that it constitutes an at-risk practice that must be included in a more comprehensive prevention policy.

Organisers of sports events

The Public Health Code (Article L.3613-3) states: "*The official partners of sports events and sportsmen as such undertake to observe a charter of good conduct defined by decree.*" As far as we know, that decree has never been issued. There is also an obligation for the general conditions of national programme companies to provide for measures "*to promote the protection of sportsmen's health and the fight against doping*" (Article L.3613-2 of the Public Health Code). Such a provision should, however, be qualified since it concerns only public television channels, which are the ones that cannot afford to buy the broadcasting rights for the sports events with the most viewers, such as football.

Distribution of responsibilities

Given the number of bodies active in the prevention field, one may well wonder how responsibilities are shared. The answer is that initiatives are many and various but co-ordination could still be improved. The system of peripatetic lecturers has been used both by the CPLD and by the CNOSF's Sport Health Foundation, apparently without much discussion and without even a joint assessment. There is no objective reason why what is done to co-ordinate and assess prevention actions in the field of drug addiction cannot be transposed to the war on doping.

There are difficulties between the Minister of Sport and the CPLD as regards the distribution of tasks. The question may be asked whether the Ministry of Sport should continue to carry out prevention actions. The answer is not easy since the Ministry remains the traditional financial partner of the sports federations. However, the latter are unavoidable partners in the prevention process.

Article 7 - Collaboration with sports organisations regarding the measures that they must take

1. Encouragement of sports organisations

The Act of 23 March 1999 on the protection of sportsmen's health and the fight against doping introduced fairly complex provisions which require the participation of a range of parties. However, we shall here deal only with the case of the sports federations and the medical doping prevention and control units because we felt that these were the bodies most directly concerned as regards medical monitoring in the field.

1) Sports federations

Two factors act as incentives for the sports federations to ensure good-quality medical monitoring: State aid and the statutory provisions of the Act of March 1999.

National agreements on objectives

National agreements on objectives constitute the legal basis for the partnership between the Ministry of Sport and the various sports federations. This annual document sets out the different obligations to be met by the federations in exchange for financial and staffing assistance. Every year, main themes are defined and, for 2003, the promotion of health through sport and the extension of medical monitoring of sportsmen/women appear among the four adopted. In order to prove the genuineness of the actions they have undertaken, the federations have to supply several reports a year: a general progress report, a report by the national technical director on the actions subsidised, reports on the routes to high-level sport and a financial statement. The preparatory forms for the objectives agreement contain four budget headings relating to sportsmen's health and the fight against doping. The item *Performance*, which concerns high-level sport, contains two specific headings (Medical Monitoring, Costs of Medical Supervision). A specific budget heading covers the development of medical prevention and doping control activities.

Sums devoted to the fight against doping and sports medicine in the agreements on objectives (millions of euros)

Year	2000	2001	2002	2003 (au 12/09)
Medical Monitoring	2,06	2,31	2,4	2,2
Supervision	1,60	1,88	2	2
Development of medical activities	0,49	0,9	1,3	0,9
Financing of tests	0,67	0,6	0,5	0*

*This budget heading is transferred to the regional directorates, which are now paying for tests instead of the federations.

The table shows clearly the upward trend of appropriations for the sports federations, with the financing of tests now being transferred to the Ministry's regional offices.

Statutory provisions

Any sportsman/woman wishing to take part in a competition or sports event organised by a federation or under its auspices must possess a doctor's certificate stating that there is no medical objection to the practice of that sport. However, for certain disciplines a further examination is needed. These are:

- martial sports for which incapacitation is authorised;
- mountaineering;
- firearm sports;
- mechanical sports;
- aerial sports apart from model aircraft making;
- undersea sports.

Sportsmen taking part in competitions organised or authorised by sports federations must tell their doctor the nature of the sport so that he can consult the list of banned products when choosing a prescription. If the doctor has to prescribe such products or processes, he must inform the sportsman in writing that these will rule out practice of the sport concerned. The doctor's prescription must state that he has fulfilled this obligation. For substances whose use is compatible with the practice of a sport under certain conditions, the doctor is also required to inform the patient in writing that he must present the prescription for any check required.

When a doctor notices "*signs suggesting a doping practice*" (Article L. 3622-4 of the Public Health Code), he must refuse to issue the medical certificates necessary for issue of a licence or participation in a sports event. In addition, he must inform the patient of the risks that he is running and direct him to a medical unit or initiate a care approach in liaison with a medical doping prevention and control unit. Failure to do this may be penalised by the French General Medical Council. Nevertheless, it should be made clear that, as in the case of drug addiction, it is not a doctor's habit (despite the risk of penalties) to inform on his patients. This provision of the Act of 23 March 1999 gave rise to debate.

Doctors who have to treat cases of doping or the resulting pathologies must forward the individual data anonymously to the scientific unit attached to the Doping Prevention and Control Council.

In general, the legal provisions seek to compel federations to comply with certain obligations regarding sportsmen's health. Thus: "*The sports federations shall look after the health of their members and to this end shall take the necessary measures, particularly as regards training programmes and the timetable of sports competitions or events which they organise or approve*" (Article L. 3621-1 of the Public Health Code). Furthermore, they are required to provide their members (registered members and supervisors) with information on doping prevention.

Special provisions have been laid down for top sportsmen, for example in the form of a medical record book issued to each top sportsman (L. 3621-3 of the Public Health Code).

This is actually what was proposed in 1984, when the medical record book was to apply to all sportsmen. The record book, which is intended for top sportsmen, must contain only sport-related information and medical data on sports activities. The content of the booklet must be available only to the doctors attending the sportsmen and, during tests, only to approved doctors. The nature and frequency of examinations are defined by an Order of the Ministers for Sport and Health, which at least in theory allows uniform good-quality monitoring adapted to the different sports.

Each federation is at liberty to supplement the minimum compulsory provisions. Prevention programmes may therefore be extremely varied. They may entail the obligatory presence of a doctor for training courses of a certain duration, specific federation training courses or prevention action involving bringing together or publishing documents. These programmes are conducted with the help of technical staff of the Ministry of Sport seconded to the federations.

II) Medical Doping Prevention and Control Units

During the Parliamentary debates on the new Act, it was decided to create "*medical units for the fight against doping which would be advice centres to which doping victims could apply*"¹². Since the new Act on Sport No 2003-708 of 1 August 2003¹³, their name has become "*medical unit for the prevention and control of doping*" in order to demonstrate their predominantly preventive function.

The mode of operation originally envisaged was similar to that envisaged for the Aids advice and screening centres, ie consultations were to be anonymous in order to preserve the atmosphere of confidence necessary for treatment. However, these initial provisions have been supplemented by a much more coercive obligation whereby doctors are now required to give to those units the names of sportsmen who show signs of doping.

Notification of the unit's doctor in this way is covered by medical secrecy. Medical care must be provided by the unit either alone or in collaboration with the notifying doctor. The notification requirement has obvious dangers for public liberties. Unlike the notification required for certain transmissible diseases, a suspicion of doping is not a matter of simple diagnosis. Notification risks producing the opposite effect to that desired since sportsmen with the most serious and therefore most easily detectable pathologies will continue to use alternative channels or unscrupulous doctors. The average GP feels weighed down by the responsibility and is uncertain whether he has the training to cope with it. The trend as regards the taking of doping products is such that it is difficult to imagine serious cases being reported at the local level.

Ultimately, the operation of the medical units must be based mainly on sportsmen's voluntary cooperation. However, anonymity during consultations is guaranteed only when the patient so requests, which limits its usefulness because the patient has chosen to consult the unit of his own free will.

Decree No 2000-378 of 28 April 2000 (incorporated in the Public Health Code) fixes the conditions for the operation of these units. They are approved by a joint Order of the Minister for Health and the Minister for Sport following an opinion from the manager of the regional hospitals agency. They receive financial assistance from the Ministry of Sport. For 2003, the total appropriations came to €667,000. It should be mentioned that these units do not constitute specific services and do not operate within existing hospital facilities. There is one unit for each region, ie a total of 25 (since there are three in the Rhône-Alpes region and two in the Provence-Alpes-Côte-d'Azur region).

Persons treated by these units may ask the doctor for a personalised certificate mentioning the duration and purpose of the treatment. Consultations must be given "*by medical and paramedical staff with qualifications particularly in pharmacology, toxicology, psychiatry or the physiology of exercise*" and must "*ensure the medical and psychological treatment of persons affected by the misuse or indirect use of doping substances or procedures*".

Because of the lack of epidemiological data on doping as shown by a 1998 CNRS study, the medical units have to act as clearing houses for the collection of epidemiological data and their onward transmission to the Health Watch Institute, which is responsible on French territory for identifying trends in the various medical pathologies.

An initial report on the operation of these units is being prepared. The data in our possession reveal very great disparities.

¹² Official Journal of the French Republic, debates, Senate, 23 December 1998, sitting of 22 December 1998, page 6662

¹³ Official Journal of the French Republic, 2 August 2003, page 13,276

As regards consultations, some units have had none, while one unit has had 59. The gap is of the same order with respect to telephone calls. As regards prevention, activities are varied. They range from the absence of any activity to the arrangement of meetings with medical and paramedical staff, creation of an information centre, training of regional technical advisers, talks at reception facilities for top sportsmen, presentations to faculties of medicine and pharmacy, production of booklets and posters etc.

It is too soon to draw general conclusions about the operation of the units, the last of which was approved only on 12 December 2002. However, one of the comments most frequently made refers to the deficit in communication concerning their existence and the wide variations in their activities.

2. Anti-doping provisions

The federations' disciplinary provisions

The Act provides that approved sports federations must initiate disciplinary procedures and impose penalties on registered members who have breached the Act, ie users, suppliers and those who oppose the various tests. These provisions are governed by Decree No 2001-36 of 11 January 2001 (incorporated in the Public Health Code), which requires sports federations to adopt standard disciplinary rules on doping. The federations are required, for example, to adopt rules defined by the State in order to ensure that penalties are uniform. It should be noted that two types of compulsory disciplinary rules exist within the sports federations: one general and the other specific to doping-linked offences. In the same way, there are also two types of disciplinary commissions, with specific commissions for doping.

The compulsory conciliation procedure (before the CNOSF) in sports matters provided for by the amended Act of 16 July 1984 does not apply to doping-related offences.

In order to take account of the need to reduce the period of uncertainty in doping cases, fairly short time limits have been laid down for the various bodies involved. The disciplinary body of first instance must take a decision within 10 weeks of the record of the offence being forwarded, subject to relinquishment of jurisdiction in favour of the appeal body. The total duration of the procedure must not exceed four months, which appears short given the procedural formalities to be observed. A longer period would be desirable.

As regards penalties, the public authorities have imposed a scale of penalties on the sports federations in order to prevent differences in treatment that might constitute flagrant discrimination. The fundamental principles of French law guarantee that penalties are individual not only in criminal but also in administrative matters, which excludes any system of automatic penalties as practised by certain international federations.

The penalties incurred are stated in Decree No 2001-36 of 11 January 2001. They consist of sporting penalties, disciplinary penalties such as a warning, suspension of the right to enter competitions or to exercise functions, provisional withdrawal of the licence and debarment. Financial penalties are forbidden. In the case of a first offence, the penalty may be replaced with the consent of the party concerned by "community work" to be carried out for a limited period for the benefit of the sports federation or association. Use of doping products by a sportsman may be punished by suspension of not more than three years and by debarment in the event of a further offence within five years. Refusal to submit to a test is punishable by a three-year suspension and, in the case of a second offence, by debarment. The prescription, application or administration of doping products is punishable by a 10-year suspension and a second offence can lead to debarment. Opposition to a test is punishable by a five-year suspension for a first offence and by debarment for a second offence. Deferment may be granted for all or part of the penalty for a first offence. The penalty is considered null and void if the person concerned has not committed a further offence within three years.

The disciplinary rules must provide for the setting up of two disciplinary commissions, one of first instance and one of appeal. These bodies are composed of five members chosen for their qualifications from a list drawn up by Order of the Minister for Sport after consultation of the Doping Prevention and Control Council. The chairman of the federation may not be a member of these disciplinary bodies and not more than one member may belong to the federation steering committee. At least one member must belong to a health profession and another must be chosen for his legal skills. During proceedings, all notifications must be made by registered letter with acknowledgement of receipt. A person who has received a disciplinary penalty at a first hearing has 10 days in which to appeal (15 days if he lives outside metropolitan France). The appeal is suspensive and can come both from the sportsman and from the federation. The appeal procedure may not be conditional on the payment of a sum of money nor may it be limited by decision of a federation body as regards the request for an appeal.

In general, the CPLD's finding is that the work of the sports federations is of good quality. Out of about 350 dossiers, the federations have dealt directly with three quarters of the cases. It also appears that there are few instances of sportsmen convicted of doping in which the federation does not take a decision. On the other hand, in certain sensitive cases, federations deliberately allow the time limits to be exceeded in order to avoid awkward questions, which forces the CPLD to assume automatic jurisdiction in such cases. However open to criticism such misbehaviour may be, it simply justifies, after the event, one of the reasons for setting up the CPLD, which was to end the timidity and even slackness of certain federations.

Regarding procedure, further efforts are needed to improve the way in which federations give reasons for their decisions. The same remark applies to penalties imposed for substances like corticoids (which have no therapeutic justification) or cannabis. Here we should perhaps not forget that the use of cannabis is prohibited for everyone throughout French territory.

The use of beta-2-agonists on the basis of medical prescriptions leaves a number of question marks over the need for such prescriptions.

3. Tests

Samples

The sampling procedure is subject to a strict protocol. Several texts implementing the relevant provisions of the Act have been adopted. Decree No 2001-135 of 11 January 2001 (incorporated in the Public Health Code) covers the conduct of tests. It distinguishes between tests performed on the occasion of sports competitions and events and those taking place during training. The decision to carry out a test is taken by the Minister for Sport and his decentralised services (regional directorates). A test may involve one or more samplings (generally between four and six). The cost of tests is paid for by the Ministry of Sport and totalled €496,000 in 2002. In the same year a sampling doctor's handbook and posters on the conduct of tests were published. Each year, the Minister for Sport issues an instruction to the various departments setting out the annual priorities. It is worth noting that, in 1966, the year when the first Doping Act was implemented, 12 samplings out of 37 proved positive, representing a rate of 37%. (See table on the next page for the number of samplings.)

The data concerning the main substances detected are as follows:

For 2000:

- cannabis 23%
- salbutamol 22%
- corticoids 20%
- stimulants 16%
- anabolic steroids 10%

For 2001:

- cannabis 23%
- salbutamol 22%
- corticoids 20%
- stimulants 16%
- anabolic steroids 10%

For 2002:

- corticoids 42%
- cannabis 21%
- salbutamol 12%
- stimulants 8%
- anabolic steroids 5%
- diuretics 4%

Statistics on anti-doping samplings since 1980¹⁴

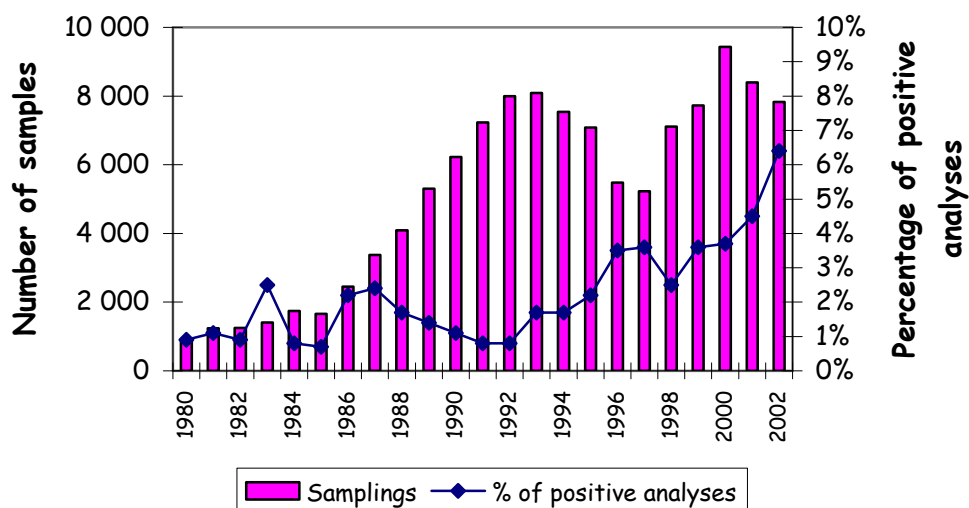
(Source: Ministry of Sport)

Year	Number of samplings	Number of positive samples
1980	894	8
1981	1240	14
1982	1252	12
1983	1410	36
1984	1747	15
1985	1656	13
1986	2453	56
1987	3377	82
1988	4088	71
1989	5300	67
1990	6222	54
1991	7229	56
1992	7999	69
1993	8089	152
1994	7535	221
1995	7081	243
1996	5436	156
1997	5228	151
1998	7113	132
1999	7726	343
2000	7966	311
2001	7235	384
2002	7762	494

There is a clear continuous increase in the number of tests and positive samples.

¹⁴ It should be noted that the number of positive samples may vary slightly as between the different statistics produced by the laboratory, which records all samples, those of the Ministry of Sport, which takes account of the test reports, and those of the CPLD. For example, the report to the Senate (Report No 442 by Mr F. Lesein, page 8) during the debates preparatory to the Act in 1998 contained statistics different from those of the Ministry of Sport. It is the CPLD's job to have samples which present difficulties analysed by the laboratory (procedure etc).

Trend in the number of samples and of the percentage of positive analyses (source LNDD)



Regarding the breakdown of samplings, the proportion (for 2002) varies between 20.9% for cycling and zero for sand yachting. The 10 most tested sports for 2002 are (in percentages of total samplings):

- cycling 20.9%
- athletics 8.4%
- football 6.8%
- rugby union 4%
- tennis 3.7%
- weightlifting 3.6%
- judo 3.3%
- fencing 3.1%
- swimming 3%
- basketball 2.6%

The high proportion for cycling is due to the International Federation's policy of increasing the number of tests.

Registered members of foreign federations account for 25.8% of the total number of sportsmen tested in 2002.

For this year, the instruction of 24 February 2003 provides for a total of 8000 samples (ie a 10% increase), 400 of which will be tested for EPO (up by 15%). In the case of this research, owing to the difficulty and protracted nature of the analyses, the Ministry of Sport alone decides whether this substance should be looked for. However, the regional directorates may request such a test on an ad hoc basis with the Ministry's agreement. Priorities concern:

- tests without warning, which should represent at least 50% of tests;
- professional sportsmen, particularly in football and rugby;
- sportsmen practising Olympic sports who are liable for selection for the Athens Olympic Games.

The instruction appends a table showing the annual estimated breakdown of the tests to be carried out region by region and month by month together with, in certain cases, the compulsory tests. There is a monthly adjustment system whereby any unrealised test potential can be distributed to other regions. In order to assist the regional directorates, a monthly timetable of the principal sports competitions is sent to them stating, where necessary, the number of samplings requested by the federation, the degree of priority attached to them by the Ministry and the usefulness of the test.

The order to the sampling doctor must state the type of sampling or screening. French legislation currently authorises samplings of urine, blood and hair, nails, teeth etc and identification of the level of alcohol in the blood. The sampling doctor may be assisted in his test by a federation representative who must be designated to him by the federation concerned at the place of competition. This representative is responsible for assisting the doctor in the non-medical part of the test.

In practice, current tests are limited to urine samplings divided into two samples A and B, which must be kept under direct observation by the approved doctor only.

For the moment, the sampling method used (urine only) is not invasive. However, where sampling is later carried out on the blood, which constitutes an invasive procedure, the decree stipulates that for minors the doctor must obtain the written consent of the person possessing parental authority. This provision appears to provide full safeguards for basic rights but its effectiveness is greatly weakened by the fact that an absence of sampling authorisation is regarded as a refusal to undergo a test, which is itself subject to the same penalties as a positive test.

The sampling procedure is highly detailed. It requires the doctor to draw up a report (a single model applies for the whole of French territory) on the conditions in which sampling took place and to include the comments which the sportsman -- who must check the numbers of the samples -- wishes to make. This report is signed both by the doctor and by the sportsman. The latter may request that it include any medical prescriptions/documents allowing him to take a product the use of which is subject to restrictions.

A copy of the test report is given to the sportsman, the sports federation concerned, the Ministry of Sport and the CPLD.

In order to ensure the complete legality of samplings, Decree No 2000-262 of 22 March 2000 (incorporated in the Public Health Code) lays down the conditions on which doctors are officially approved, namely by Order of the Ministers for Sport and Health. The purpose of the approval procedure is to make sure that sampling doctors have received full theoretical and practical training. Approval is valid for a period of five years except the first time, when it is for only two years. The doctor requesting it must not have been the object of disciplinary penalties by the French General Medical Council within the preceding five years. The content of initial and continuous training is determined by Ministerial Order. It is laid down, among other things, that a doctor undergoing training must attend three tests with an already approved doctor. Doctors must also take the following oath before the Regional Court:

"I swear to carry out precisely and honestly all tests, investigations, researches, reports and operations forming part of my task. I also swear not to reveal or use anything I shall learn in the course of discharging that task."

Approval may be withdrawn from a doctor who no longer meets the required conditions, if he is the object of disciplinary penalties by the French General Medical Council or if he commits a serious offence in carrying out his task.

In most cases, doctors who perform samplings are independent doctors paid by the session on the basis of six samplings. Each regional directorate for youth and sport also has a doctor who is paid by the Ministry of Sport but his function is much more general than the fight against doping. Sampling doctors are paid on a sessional basis. They also work independently.

Some questions still remain about anti-doping tests. In theory we might conclude that these should be transferred to the CPLD, which would enable that body to take control of the whole process. However, this comes up against the problem that, unlike the Ministry of Sport, the CPLD does not have any provincial branches, which would force it to use officials from the regional sports directorates without having any supervisory authority over them. Simplification at the centre would lead to complexity at the local level.

Article 8 - International Co-operation

French policy on co-operation in the fight against doping has evolved. After the signing of two specific bilateral agreements on doping with Canada (1992-1996) and Australia (1999-2001), priority is going to the signing of global cooperation agreements in sporting matters, which always include a section on the fight against doping. However, mention should be made of official bilateral agreements, ie those which were forwarded to the Ministry of Foreign Affairs and which are the only ones listed here. These concern:

- Burkina Faso (4 February 1986);
- Romania (19 April 1991);
- Czech Republic (12 July 1993);
- Slovak Republic (1 November 1993);
- Ukraine (3 May 1994);
- Poland (1 July 1994);
- Bulgaria (21 November 1994);
- Russia (24 July 1994);
- Republic of Belarus (14 December 1995);
- Australia (11 March 1995);
- Qatar (8 July 1996);
- South Africa (26 June 1998).

There are also many other bilateral agreements which have not been formally approved by the Ministry of Foreign Affairs but the content of which refers to the fight against doping or to its prevention.

International Intergovernmental Consultative Group on Anti-doping in Sport (IICGADS)

France has been participating in this informal co-operation structure, which brings together the various interested countries, since its creation in Sydney on 16 February 2000.

European Union

Action by France at European Union level has made the Union's subordinate bodies more aware of the doping question even though sport does not appear in the treaties. This has led to a number of meetings of European Union sports ministers since the first meeting in Bad Godesberg on 18 January 1999. The meeting of the troika of sports ministers (attended by the French minister because of the current discussions on the French bill) in Lisbon on 17 March 1999 concluded with the adoption of a common position on the following two points: establishment of a non-competition test protocol and the necessity for taking steps to be represented on the World Anti-Doping Agency (WADA). The same meeting saw the adoption of the principle that the Europe representative on the Agency's executive committee would be a sports Minister appointed in the Council of Europe framework. Because of its previous involvement, France was asked to take provisional charge of such representation.

At the meeting of sports ministers in Paris on 5 July 2000 (under French chairmanship), a liaison committee was set up with a view to:

- circulating information from the WADA to Member States and the Commission;

- organising formal consultations among the Member States prior to meetings of WADA bodies;
- drawing up, together with the Monitoring Group of the Council of Europe Anti-doping Convention, proposals for meetings of WADA bodies.

At the ministers' meeting on 6 November 2000, consensus was reached on two points:

- ensuring Union representation on the WADA's policy-making bodies without further transfer of competence from Member States to the European Community;
- allowing partial financing of the Agency by the European Community according to a legal basis to be defined.

At the Council meeting on 4 December 2000, a Community contribution to the Agency's operating budget was proposed as from 2002. This financing was conditional on the following:

- ensuring that Europe did not fall into a situation where the Agency's founding council could impose budgetary constraints on it without the agreement of the Community's budget authority;
- ensuring that Europe's financial contribution was not out of proportion to its policy-making power within the Agency.

Community participation would be ensured by the President-in-Office of the Council and by a Member of the Commission.

More generally, France endeavoured at the meeting of the Council of the European Union on 7 June 2000 to include doping in the anti-drug action plan for 2000-2004. Reference was made to *"the question of at-risk behaviour and of dependency in general, including dependency on alcohol, medication, doping substances taken during physical and sports activities and tobacco"*.

Furthermore, during France's presidency of the Council of the European Union, a European seminar was organised in Paris on 5 and 6 December 2000 on the initiative of the Ministry of Youth and Sport and the Interdepartmental Task Force for the Fight against Drugs and Drug Addiction, on the theme *"Sporting practices of young people and at-risk conduct"*. Publication of a summary of the proceedings followed.

The idea of Community financing of the WADA was launched at the same time (4 December 2000) during the meeting of the EU Council of Sports Ministers.

The European Council in Nice chaired by France from 7 to 9 December 2000 adopted the declaration annexed to the Nice Treaty concerning the specific characteristics of sport and its social functions which should be taken into account in implementing the common policies. The fight against doping is mentioned twice in the text in connection with the role of the sports federations (protection of sportsmen's health, fight against doping) and the protection of young sportsmen/sportswomen (same themes).

World Anti-Doping Agency

The origin of the creation of the World Anti-Doping Agency goes back to 1 and 2 February 1999 and the meeting of the World Doping Congress convened by the IOC. On the initiative of France the European Union countries were able to present a united front which helped to win acceptance for the governments' participation in the WADA's governing bodies with half the total votes.¹⁵ France also helps to finance the World Anti-Doping Agency in the amount of \$596,589 for 2003 (\$504,978 for 2002). This payment is made through the Council of Europe. During the World Conference against Doping held in Copenhagen from 3 to 5 March 2003, France signed the declaration by the governments supporting the draft World Anti-Doping Code.

¹⁵ See paragraph of European Union above.

International federations

Paradoxically, the complexity of the French rules, and the rather distorted view of them outside France which makes them appear simply punitive, does not facilitate relations with the international sports federations, which fear having their hands tied regarding the doping question on French territory. This attitude may be due to an instinctive distrust of French law but also to legal considerations regarding the necessary autonomy of the *lex sportiva*. Clearly France cannot allow its sovereignty to be eroded by such positions, as the courts never fail to remind us. According to information obtained from the CPLD, 15 to 20% of foreign sportsmen penalised on French territory are also penalised by their international federation. Nevertheless, a favourable trend is appearing and when international competitions take place on French territory agreements on anti-doping controls are signed with the international federations concerned.

Various protocols have been signed in respect of events such as the Roland Garros Tennis Tournament, the Tour de France, the Football Confederations Cup and the Rugby World Cup. The latest concerns the world athletics championships for the summer of 2003. It was signed on 24 June 2003 between the French Minister for Sport, the International Athletics Federation, the French Athletics Federation and the National Doping Detection Laboratory and will end on 31 December 2004. The protocol concerns international athletics competitions sponsored by the International Federation (or its European association), competitions scheduled by the French Athletics Federation and non-competition tests. The number of tests to be carried out during the world athletics championships in Paris in 2003 (400) is also specified. Non-competition tests on French territory may be performed on the initiative of the Ministry of Sport, the International Athletics Federation or the WADA. However, in every case it is for the Ministry of Sport alone to perform this type of test.

Article 9 - Communication of information

The information to be forwarded to the Council of Europe is sent by the Ministry of Sport, which collects all the information from the various parties before communicating it to the Monitoring Group. It appears, however, that the flow of information may have fluctuated following the implementation of the new Act in 1999, the setting up of the Doping Prevention and Control Council and the reorganisation of the Ministry of Sport's central administration. Even so, at the Council of Europe's request, a French expert was able to present the French legislative measures in the CDDS framework at two seminars in 1997 and 1999 in the Czech Republic and Poland respectively.

Conclusions

Three general remarks result from this study.

First, we should not forget the relatively recent nature of the new legal machinery even though the first measures for combating doping date from 1965. For example, the decree on the forwarding of information between the different authorities was signed recently on 27 June 2003.

The second remark is that the system employed is highly complex.

The third remark concerns the international environment. France has chosen to act quickly at the risk of sometimes finding itself isolated, which, as we have seen, can cause difficulties with the international federations in applying the Act. We must hope, however, that the signing of a global convention under the auspices of UNESCO will lead to a more widespread use of the foundations laid by the Council of Europe Convention.

The measures studied take good account of the different aspects of the doping phenomenon. In addition, they enjoy substantial financial resources for the successful conduct of the various tasks.

As regards France's representation at international level, this is a matter for the Ministry of Sport alone - even if the CPLD can be associated with it - because of the inevitable international repercussions to which its actions may lead.

Overall, we may therefore conclude that the system does indeed appear to comply with the Convention despite its complexity but owing also to the financial resources deployed.

B. Report by the Evaluation Team

Introduction

The Evaluation Team wishes to emphasise the excellent welcome they received. The programme of the visit and talks were carefully prepared, and the discussions with the various parties were frank and open.

The national report previously drawn up gave the Team an overview of a very sophisticated but relatively complex anti-doping system.

Article 1

Aim of the Convention

The Parties, with a view to the reduction and eventual elimination of doping in sport, undertake, within the limits of their respective constitutional provisions, to take the steps necessary to apply the provisions of this Convention.

The Anti-Doping Convention entered into force in France on 1 March 1991 and constitutes part of French legislation by virtue of Ratification Law No.90-1144 of 21 December 1990. As it is a treaty ratified by the French parliament, Article 55 of the Constitution accords it greater authority than an ordinary law.

Law No. 89-432 of 28 June 1989 was in force at that time in France but it had never really been correctly applied owing to a number of deficiencies (it emerged that no action was taken in 40% of cases of positive samples).

Discussions on a new draft law began in 1997 with a change that year in the minister responsible. The Festina affair in 1998 provided political impetus, and a new law (commonly known as the “Buffet Law”) was promulgated on 23 March 1999. Its aims are as follows:

- to protect health, with the establishment of a highly sophisticated medical supervision system;
- to act against the suppliers of and trafficking in doping substances ;
- to establish a system of regulatory administrative procedures that are simple, consistent and fair.

Order No. 2000-548 of 15 June 2000 on the Legislative Part of the Public Health Code (Code de la santé publique [CSP]) repealed the Law of 23 March 1999 and replaced it by Articles L.3611-1 to L.3634-5 of the CSP, incorporating precisely the same provisions as in the Law.

The new law gave rise to a fairly complex system. For example, its application has already necessitated the drawing up of 11 decrees and 35 implementing orders. This large number of regulations shows that the French government has chosen a policy of strong commitment on the part of the state, in accordance with the country’s tradition.

This strong commitment can also be seen in the Ministry of Sport’s budget appropriations for combating doping, which are more or less double those of other State Parties to the Convention that have a good anti-doping policy. We would point out that France’s budget increased by 341% between 1997 and 2003, but it may reasonably be asked whether the French system is more efficient as a result.

The large number of people involved in combating doping means that the policy principles may become blurred and the situation less transparent for the public.

In the Team's opinion, France has set up a system for combating doping that is fully in line with the aim of the Convention, but it is relatively complex and costly.

Comments by France

In response to the Evaluation Team's remark on the improvement in the performance of the French system over the last few years, it has to be stressed that, with more than 8,000 doping checks carried out in 2003, France accounts for about 7% of the checks made worldwide. By way of comparison, the United States carried out about 6,800 checks. On the other hand, although the French system is complex, it sets out to be of high quality since it encompasses all the areas of the fight against doping – information (freephone number (numéro vert)), prevention and treatment (units for preventing and combating doping), checks (over 580 registered and sworn medical officers responsible for taking samples, analyses), enforcement (fight against trafficking, Council for the Prevention and Fight against Doping (CPLD)).

France would have liked more comments or comparisons with other countries on the justifiability of the terms "complex and costly" used by the Evaluation Team.

Article 2

Definition and scope of the Convention

1. For the purposes of this Convention:

- a. "doping in sport" means the administration to sportsmen or sportswomen, or the use by them, of pharmacological classes of doping agents or doping methods;*
- b. "pharmacological classes of doping agents or doping methods" means, subject to paragraph 2 below, those classes of doping agents or doping methods banned by the relevant international sports organisations and appearing in lists that have been approved by the Monitoring Group under the terms of Article 11.1.b;*
- c. "sportsmen and sportswomen" means those persons who participate regularly in organised sports activities.*

2. Until such time as a list of banned pharmacological classes of doping agents and doping methods is approved by the Monitoring Group under the terms of Article 11.1.b, the reference list in the appendix to this Convention shall apply.

Adoption of the list

French law provides that the list of doping substances shall be determined by a joint order issued by the Ministers of Sport and Health. However, the time taken to issue this order is often between three and six months, which in effect means that France is out of step with other states, the international federations and the French federations for part of the year, since it does not base the action it takes on the same list of banned substances. An athlete may as a result not be punished in France for several months for an offence with a new substance but would be punished everywhere else and vice versa.

At the moment, an order of 31 July 2003 lists the products considered to be doping substances in France, while the new list is always adopted at the international level on 1 January each year.

Definition of doping

In France, doping is defined by Article L3631-1 of the Public Health Code:

"During sporting competitions and events organised or approved by sports federations, or with a view to taking part therein, no one may:

- use substances and methods likely to modify capabilities artificially or to conceal the use of substances or methods that have this property;
- have recourse to such of these substances or methods whose use is restricted when these conditions are not met."

This definition of doping has its limits: certain events that are not open to registered sportspeople (with a licence) or where the amount of the prizes distributed is lower than €3000 cannot be subjected to doping checks. At the same time, the situation with regard to gym clubs, where non-registered sportspeople (i.e. those who are not members of a federation) train, is not very clear. The law would allow these people to be checked at such places but it seems that no checks are carried out in practice.

The Evaluation Team considers it necessary for the French authorities to amend the law in order to provide for the possibility of checking any sportsperson and to rely exclusively on the Monitoring Group's list, the entry into force of which in France requires the issue of a decree. This is in order to speed up the procedure and ensure that the list is adopted on the same dates in France and at the international level. The credibility of the fight against doping both for the athletes and in the media and the general public depends on this.

Comments by France

France will endeavour to amend Article L3621-2 of the Public Health Code to avoid recourse to two texts (decree and order) that are more or less identical in substance.

Article 3

Domestic co-ordination

1. *The Parties shall co-ordinate the policies and actions of their government departments and other public agencies concerned with combating doping in sport.*
2. *They shall ensure that there is practical application of this Convention, and in particular that the requirements under Article 7 are met, by entrusting, where appropriate, the implementation of some of the provisions of this Convention to a designated governmental or non-governmental sports authority or to a sports organisation.*

The first observation made by the Evaluation team and even by several ministry officials is that there are a very large number of players involved. However, it goes without saying that the more people there are who are engaged in the fight against doping the more internal co-ordination is essential if action taken is to remain coherent.

The Ministry of Sport is, of course, the principal player. It is responsible for co-ordinating the anti-doping system. However, the law has given certain powers to other bodies, and more co-ordination would no doubt be beneficial:

Council for the Prevention of Doping

In accordance with the law, the ministry has delegated major responsibilities to the Council for the Prevention and Fight against Doping (CPLD) since 1999. However, the Team noted a number of weaknesses in the co-ordination between the ministry and the CPLD, especially as regards the exchange of information on positive cases, which is crucial for drawing up a plan to combat doping in the months and years to come.

Regional directorates

The ministry has delegated to the regional directorates the implementation of a percentage of the checks to be carried out. It is therefore up to the regional director to choose the event and the athletes to be checked without the ministry pointing out the risk criteria to him or her (for example, data on the number of positive cases in the region in previous years).

At the moment, it is the maximum capacity of the laboratory that determines the total number of checks to be made over the year in France. The number of checks on French athletes is calculated by the Sports Directorate (Bureau DS5) after deducting the number of samples to be taken and analysed during the international events taking place in the current year.

The ministry should implement a national anti-doping plan and propose an appropriate selection based on national needs. In the present situation, it cannot be said that athletes (or sports) with the highest doping risk are those that are checked the most.

At the moment, the fight against trafficking in doping substances seems to be well co-ordinated in some regions, especially Ile de France (see remarks on Article 4 below). However, the Evaluation Team regrets that there is no permanent system for exchanging information at the national level between the Ministries of Sport, Health, Education, Justice and the Interior.

Medical anti-doping units

Since 1999, France has been setting up units for preventing and combating doping (*antennes médicales de prévention et de lutte contre le dopage* - AMPLDs) funded by the Ministry of Sport. Their aim is primarily preventive, i.e. to help athletes avoid using banned substances and methods, but also to help those who have been punished for doping.

The 24 units that exist today (one per region) operate within existing hospital services. A review of their activities indicates considerable disparities in the action they take (there has incidentally been no real assessment of their work up to now) as well as major shortcomings in terms of communication: the sporting world is not very familiar with them and uses them very little, even in connection with the rehabilitation of punished athletes who are required by law to obtain from an AMPLD a medical clearance certificate for the renewal of their licence.

The AMPLDs do not seem to be geared to assuming responsibility for athletes with genuine doping problems as they are located in a hospital environment, whereas in most cases doped athletes do not want to be considered and treated as sick people.

The units could have an important role in combating doping if their operation were given more media exposure in the future.

In order to ensure better internal co-ordination, the Evaluation Team considers that France would be well-advised to set up a permanent interministerial system for the exchange of information at the national level between the Ministries of Sport, Health, Education, Justice and the Interior. The CPLD, as an independent body, should also be involved.

Comments by France

1. It would be more accurate to write that the CPLD exercises responsibilities assigned to it by law (and not delegated by the Ministry of Sport) and that it is an independent administrative authority, in particular by virtue of the way its members are appointed and of its budgetary autonomy.
2. As regards the weaknesses in co-ordination between the CPLD and the Ministry of Youth, Sport and the Voluntary Sector (MJSVA) with respect to exchanges of information on positive cases, apart from reports on doping checks received directly, the MJSVA receives the figures for doping checks from the CPLD on a monthly basis: the date of the check, the date of the analysis report, the sport involved, whether the check was during or outside a competitive event, the *département* where the check took place and the substance detected.

3. France partly endorses the Evaluation Team's diagnosis with regard to the anti-doping units, but the MJSVA stresses that an assessment of their operation is currently under way and points out that it is the sports federations and not these units that are somewhat remiss regarding compliance with the obligation to consult so that an athlete punished for a doping offence can get his or her licence back at the end of the suspension period.

Article 4

Measures to restrict the availability and use of banned doping agents and methods

1. *The Parties shall adopt, where appropriate, legislation, regulations or administrative measures to restrict the availability (including provisions to control movement, possession, importation, distribution and sale) as well as the use in sport of banned doping agents and doping methods and in particular anabolic steroids.*

France has a very well developed legislative system for checking on the circulation, possession, importation, distribution and sale of banned doping substances and methods. This system includes the provisions on doping and on poisonous substances (Articles L 5132-1 to L 5132 -1 of the Public Health Code) and is primarily applied to the athlete's entourage.

The increase in the number of customs seizures and police operations since 1998 shows the effectiveness of the implementation of this system.

The Evaluation Team was able to meet the units in the Ile de France region responsible for combating trafficking in doping substances. This unit was created as early as 1998 around the Youth and Sport Regional Director and consists of representatives of the various ministries and bodies concerned: the doctor in charge of the Ministry of Sport's action to combat doping, a pharmacist from the Ministry of Health, the Deputy Public Prosecutor at the Paris regional court (*Tribunal de Grande Instance de Paris*), police superintendents and inspectors from the Doping Group of the Drugs Squad, and representatives of the National Tax Investigations Directorate and of the Interregional Directorate of the Ile de France customs service.

This type of co-operation, which is characterised by a simple structure and an informal system of operation, is crucial and has proved its ability to enable the authorities to combat trafficking effectively (customs seizures, etc) and deal with breaches of the law (closure of pharmacies), and this in sports halls too. There are currently five other similar units in France. The decree of 27 June 2003 provides that all French regions will have a commission of this type by the end of 2004 at the instigation of the prefect of the region.

The Evaluation Team has noted that the Ile de France unit, and especially the representatives of the judicial authorities, would like more feedback from the CPLD, for example on the prosecution of cases testing positive for cannabis. The units are not informed by the CPLD about whether the result is cannabis positive, but Article 40 of the Code of Criminal Procedure states that it is compulsory to inform the public prosecution service. There have been cases in which the judicial authorities have opened an inquiry in response to information in the press.

2. *To this end, the Parties or, where appropriate, the relevant non-governmental organisations shall make it a criterion for the grant of public subsidies to sports organisations that they effectively apply anti-doping regulations.*

The Evaluation Team wishes to emphasise that, a few years ago, the Ministry of Sport withdrew certification, and therefore any possibility of receiving public subsidies, from the French Weightlifting Federation for three years for failing to meet the conditions imposed in the fight against doping.

3. *Furthermore, the Parties shall:*
- a. *assist their sports organisations to finance doping controls and analyses, either by direct subsidies or grants, or by recognising the costs of such controls and analyses when determining the overall subsidies or grants to be awarded to those organisations;*
 - b. *take appropriate steps to withhold the grant of subsidies from public funds, for training purposes, to individual sportsmen and sportswomen who have been suspended following a doping offence in sport, during the period of their suspension;*
 - c. *encourage and, where appropriate, facilitate the carrying out by their sports organisations of the doping controls required by the competent international sports organisations whether during or outside competitions; and*
 - d. *encourage and facilitate the negotiation by sports organisations of agreements permitting their members to be tested by duly authorised doping control teams in other countries.*

All checks on French territory must be carried out by French medical officers; this poses a problem for the international federations (UEFA, IAAF), which have accredited their own agents for this work.

For this reason, the Ministry of Sport signs protocols with the international federations (UCI, IAAF, ITF) to organise doping checks at major sporting events taking place in France. The protocols, “areas of consensus” between the ministry and the federation, state that French law must be complied with and that samples taken at these events must be collected by doctors accredited for this purpose by the ministry and analysed by the National Drug Testing Laboratory (LNDD) at Châtenay Malabry.

The obligation to send the samples to the French laboratory prevents the possible use of other laboratories accredited by neighbouring countries.

The Evaluation Team welcomes the effectiveness of the French system for combating trafficking. It strongly urges all the regions to develop a system of co-operation that is as efficient as the one set up in Ile de France for checking on the circulation, possession, importation, distribution and sale of banned doping substances. This system can be considered an example of good practices for other countries.

The Evaluation Team welcomes the Ministry of Sport’s decision to withdraw certification and, consequently, public subsidies from a federation that fails to comply with the anti-doping rules.

4. *Parties reserve the right to adopt anti-doping regulations and to organise doping controls on their own initiative and on their own responsibility, provided that they are compatible with the relevant principles of this Convention.*

This applies to France. The practical applications are discussed under Article 7.

Comments by France

The CPLD states that the Île de France unit has never asked it for specific information.

The MJSVA wishes to emphasise that the CPLD is involved in the drawing up and signing of all international protocols concluded with the international federations.

Article 5 Laboratories

1. *Each Party undertakes:*

- a. *either to establish or facilitate the establishment on its territory of one or more doping control laboratories suitable for consideration for accreditation under the criteria adopted by the relevant international sports organisations and approved by the Monitoring Group under the terms of Article 11.1.b;*
 - b. *or to assist its sports organisations to gain access to such a laboratory on the territory of another Party.*
2. *These laboratories shall be encouraged to:*
- a. *take appropriate action to employ and retain, train and retrain qualified staff;*
 - b. *undertake appropriate programmes of research and development into doping agents and methods used, or thought to be used, for the purposes of doping in sport and into analytical biochemistry and pharmacology with a view to obtaining a better understanding of the effects of various substances upon the human body and their consequences for athletic performance;*
 - c. *publish and circulate promptly new data from their research.*

The Châtenay-Malabry laboratory is a public administrative institution financed by the ministry. It has WADA/IOC accreditation and has obtained the ISO 17025 quality standard. It is administered by a governing body but actual responsibility is assigned to a director. Its independence is guaranteed.

The laboratory analyses 8800 samples a year or about 800 a month. Of these 8800 samples, 4000 are collected during compulsory checks at international sports events, 4000 at national events requested from the regional directorates of the Ministry of Sport and 500 from other countries (Luxembourg, Monaco and Austria in the recent past) or from checks made by international federations outside France.

Members of the Evaluation Team were able to satisfy themselves that the staff are highly skilled and the facilities efficient. With respect to its quality system, the laboratory has taken appropriate measures to recruit and retain skilled staff and to train and organise refresher training for them. About 20% of its budget and time are devoted to quality maintenance.

As regards security and the chain of security within the laboratory, the checks carried out on the spot by the Evaluation Team show that these matters are being properly dealt with.

The laboratory is engaged in research activities. The Research Committee takes decisions on main lines of research relating to methods of detecting doping substances (new forms of recombinant EPO and NESP, modified haemoglobins, glucocorticosteroids, for example). 10% of skilled staff are engaged in research, which has an annual budget of €100,000. The laboratory publishes and distributes the results of its research.

The laboratory has initiated the implementation of a method of detecting EPO in urine and has trained laboratory technicians from Sydney, Lausanne, Barcelona, Oslo, Berlin, Los Angeles, Kreisha, Moscow, Madrid, Athens, Tunis and Bangkok in the use of this method. Today, the laboratory analyses 400 samples a year for the presence of EPO. The selection of national samples to be subjected to this analysis is the responsibility of the Ministry of Sport.

French legislation does not allow the analysis of samples to be carried out other than in the French laboratory. This currently poses two problems:

- Firstly, the laboratory's capacity dictates the number of possible checks that can be made per year in France (see page 21 of the national report). Even if the national laboratory's capacity is

one of the aspects to be taken into consideration, the national anti-doping plan should be based on other aspects (see remarks on Article 7, para. 3 a);

- Secondly, one of the complaints constantly repeated by the international federations is the impossibility of having analyses of samples collected on French territory carried out in another accredited laboratory.

The Evaluation Team thinks it would be desirable for the law to be modified to recognise the other laboratories accredited by WADA.

Comments by France

France intends to license other foreign laboratories accredited by the World Anti-Doping Agency, but in order to be able to do so, it must first amend the current law. It is also studying the possibility of having another national laboratory accredited by WADA and licensing, at the ministerial level, several regional laboratories for regional or local competitions.

Article 6 Education

1. *The Parties undertake to devise and implement, where appropriate in co-operation with the sports organisations concerned and the mass media, educational programmes and information campaigns emphasising the dangers to health inherent in doping and its harm to the ethical values of sport. Such programmes and campaigns shall be directed at both young people in schools and sports clubs and their parents, and at adult sportsmen and sportswomen, sports officials, coaches and trainers. For those involved in medicine, such educational programmes will emphasise respect for medical ethics.*

Education

There are many players in the field education. Education, prevention and awareness-raising are carried out at several levels through a number of bodies: the ministry, the CPLD and the Sports Health Foundation of the French National Olympic and Sports Committee (CNOSF).

However, there is no one body responsible for guiding or co-ordinating this sector. Proposals for lecture programmes, for example, have been made both by the CPLD, with its series of lectures entitled "Doping and you" (Et toi le dopage) and by the Sports Health Foundation with its establishment of another network of 230 lecturers/facilitators, which is clearly not desirable and has been regretted by the parties concerned.

There are many different initiatives, most of which are very interesting:

- a travelling bus to raise young people's awareness of the complexity of risk behaviour, especially doping;
- an information pack for young people (11,000 copies);
- continuing education to inform and raise the awareness of community pharmacists (3000 pharmacists concerned in 2003);
- a protective wallet for athletes to store their prescriptions;
- the production of a pack of cards on health prevention for young people;
- the free telephone number "écoute dopage" (doping helpline), which was set up in 1998 and functions as a non-profit association pursuant to the Law of 1901;
- etc.

Even if it is rare for one of the players to take any completely separate action, this situation is nevertheless a source of potential confusion and lack of consistency. In addition, it makes it more difficult to carry out an ex post facto evaluation on a general scale.

The Evaluation Team noted that most of these activities are aimed at young people (whether or not they still attend school), adult athletes and sport and medical management staff, but no specific programme has been organised for the users of gymnastics halls and fitness centres, which are, however, particularly exposed to attempts to make them engage in doping, especially via the food supplements and other doping products sometimes sold there.

Training

In the field of training, whether it be for physical education teachers – who answer to the Ministry of Education – or course leading to the qualification of a state registered instructors – which fall within the remit of the Ministry of Sport – there is no obligation to include courses on doping in the curriculum.

This also applies to doctors during their university training. Owing to this lack of awareness of the rules and the lack of the information they can subsequently receive on the job, some doctors who are not informed about banned substances may lead an athlete to believe that a prescription is justification in itself.

2. *The Parties undertake to encourage and promote research, in co-operation with the regional, national and international sports organisations concerned, into ways and means of devising scientifically-based physiological and psychological training programmes that respect the integrity of the human person.*

A distinctive characteristic of the French system is the availability of a very large medical staff with the federations, the national teams and individual sportsmen and -women for the purpose of protecting health, providing medical supervision during training, etc. By contrast, however, research on producing physiological and psychological training programmes does not appear to be as well developed.

Moreover, one of the problems facing professional teams arises from the fact that their staff are not always trained for and alert to the fight against doping; There is, on the one hand, official technical supervision and, on the other hand, there are unofficial trainers who cannot always be controlled and whose competences should be verified in the light of French legislation.

The CPLD supports various scientific studies on the fight against doping, especially one on endogenous/exogenous cortisol, which is a very important study to convince WADA to keep corticosteroids on the list of banned substances in the future.

With regard to education and information, it would be advisable to appoint a national standard-setting and co-ordinating body, the role of which would be to provide a better definition of the target groups – young users of sports halls, top athletes, etc – to co-ordinate action between the partners and assume responsibility for assessing action taken and its effects.

Particular attention should be devoted to the users of gym halls, a target group that does not seem to have been sufficiently taken into account.

It is essential to introduce classes on risk behaviour and doping into each training course from the very beginning and not only hold them as part of an additional higher education diploma course in, for example sports medicine.

The Evaluation Team urges France to provide the Scientific Group of the Anti-Doping Convention with the results of its research on cortisol as soon as possible so that they can be forwarded to the appropriate people.

Comments by France

1. France had mentioned the wide variety of the action taken in the area of prevention. The MJSVA and the CPLD thus initiated and financed a study aimed at assessing the instruments available for the prevention of doping, in partnership with the French National Olympic and Sports Committee (CNOSF) and the Interministerial Mission for the Fight Against Drugs and Drug Addiction (MILDT).

2. As far as research is concerned, Article L 3612-1 of the Public Health Code specifies that the CPLD shall have a scientific unit for the “co-ordination of basic and applied research in the areas of sports medicine and doping”. Apart from the research it finances, the CPLD regularly brings together (every two months) a “committee of sports doctors” and a “future-oriented group” made up of very well qualified doping researchers.

Article 7

Co-operation with sports organisations on measures to be taken by them

1. *The Parties undertake to encourage their sports organisations and through them the international sports organisations to formulate and apply all appropriate measures, falling within their competence, against doping in sport.*

France has some 120 national sports federations today. National target-setting agreements are signed each year between the ministry and each federation and constitute the legal basis for the partnership between the Ministry of Sport and the various sports federations. These agreements lay down the various obligations that the federations have to meet in exchange for assistance in the form of financial and human resources: medical supervision, the development of prevention and anti-doping activities. Most of these federations (90), which cover all sports (not only Olympic sports) are members of the CNOSF.

Some French national sports federations, in association with the Ministry of Sport, play a very important role in encouraging international federations to optimise anti-doping systems during major international sports events in their territory (e.g. the Tour de France or Roland Garros).

2. *To this end, they shall encourage their sports organisations to clarify and harmonise their respective rights, obligations and duties, in particular by harmonising their:*

a. anti-doping regulations on the basis of the regulations agreed by the relevant international sports organisations;

All the sports federations have anti-doping regulations that have to be validated by the Ministry of Sport and be in conformity with French anti-doping legislation.

The difficulties the national and international federations face in reconciling certain aspects of French law have been examined with respect to Article 4.3.

Medical supervision is compulsory for 7000 top sportsmen and –women. It comprises three medical examinations and three biological analyses specific to each sport per year. The federations are responsible for this supervision, which must be organised by the federation’s medical officer and carried out at a medical centre belonging to a network of centres licensed by the Minister for Sport. The aim of the medical supervision is to prevent any harmful effects of high-level training on the athlete’s health (overtraining, etc).

The first measure taken to organise this medical supervision was the restructuring of the sports federations’ medical departments, while the second will be the creation of a database to record all medical examination results. The CPLD has financed a review of all the medical reports currently

available at the National Sports Institute in order to study the sickness and death rate of top sportsmen and -women.

- b. lists of banned pharmacological classes of doping agents and banned doping methods, on the basis of the lists agreed by the relevant international sports organisations;*

There are sometimes conflicts between the international federations and the ministry, either because the list of banned substances and methods adopted by France (and ratified by the Monitoring Group of the Anti-Doping Convention) differs from the one adopted for the international sports federation or because there are points of divergence between French anti-doping law and the federation's anti-doping regulations (see remarks on Article 2).

- c. doping control procedures;*

In France, the methods used for carrying out doping checks in all sports are standardised because all the checks are organised by the Ministry of Sport.

The system for transporting samples from the place where the check has been carried out to the laboratory does not involve a sealed container. Moreover, there are no documents to ensure compliance with the chain of security.

The Ministry of Sport has 589 doctors registered for taking samples who have been given specific theoretical and practical training to obtain a licence valid for five years. Continuing training is compulsory every two years. These doctors do not necessarily have to be independent of the sport being checked.

At the moment, the French anti-doping system is not quality certified (ISO 9000:2001).

Current French law does not permit the blood samples collected to be analysed in the national context for the purposes of screening in order to decide, for example, to carry out an EPO analysis but only to detect a doping substance.

The Evaluation Team recommends that France make the necessary efforts to obtain certification for its anti-doping programme.

Comments by France

The doctors authorised to take samples are initially licensed by the MJSVA for two years, then for a renewal period of five years. In principle, these doctors are, as far as possible, independent of the sport in which checks are being carried out, although this is not a legal requirement.

- d. disciplinary procedures, applying agreed international principles of natural justice and ensuring respect for the fundamental rights of suspected sportsmen and sportswomen; these principles will include:*
- (i) the reporting and disciplinary bodies to be distinct from one another;*
 - (ii) the right of such persons to a fair hearing and to be assisted or represented;*
 - (iii) clear and enforceable provisions for appealing against any judgement made;*

Disciplinary procedures guarantee respect for the athletes' basic rights: the reporting body is separate from the disciplinary body; athletes are entitled to a fair hearing and to be assisted or represented and appeal to an appellate disciplinary body against any decision handed down.

Each federation has two disciplinary committees, one of which is specifically responsible for doping-related issues. These two committees have been in existence for a very long time, which can be explained by the considerable skills required for matters to do with doping (legal, scientific, medical).

The CPLD may review the sports federations' disciplinary decisions.

The Evaluation Team noted that there were many positive cases in 2002 in which the sports federations did not punish the athletes concerned. The CPLD should deal with the cases in which the federations have not imposed sanctions.

In the French national report and in the presentation of the statistics, only the figures on the number of positive samples given by the LNDD are supplied but never those on the actual number of positive cases that they represent in each sport.

The CPLD recognises the majority of sanctions imposed by the sports federations but in some cases it can review the decisions taken and impose a different penalty (as in the Galdeano case, for example).

A crucial aspect is the need to preserve, on the assumption that the law will be amended, a different body responsible for carrying out checks and imposing sanctions in order to avoid any conflict of interest that might arise.

Comments by France

The CPLD cannot “review” the federations’ disciplinary decisions. It examines the files in four instances: in the case of sportspeople not registered (having a licence) with a French federation; when a federation’s disciplinary bodies have not reached a decision within the time allowed (4 months); when it “transfers to itself” the decision of a federation’s disciplinary body; and when it rules, at the request of a federation or of its own motion, on the extension of a penalty imposed by a federation to the activities of an athlete that fall within the responsibility of other federations.

It should be pointed out that sanctions are imposed by the federations and, failing this, by the CPLD.

- e. procedures for the imposition of effective penalties for officials, doctors, veterinary doctors, coaches, physiotherapists and other officials or accessories associated with infringements of the anti-doping regulations by sportsmen and sportswomen;*

The prescription, application or administration of doping products is punishable by a ten-year suspension.

The Evaluation Team has not carried out an in-depth study on this subject but it has noted that in many recent cases, especially in cycling, it has been clear that the criminal procedures provided for are applied (Festina case or the Cofidis affair, which erupted when the Evaluation Team was drawing up its draft report).

- f. procedures for the mutual recognition of suspensions and other penalties imposed by other sports organisations in the same or other countries.*

The “Buffet Law” makes the CPLD responsible for initiating disciplinary proceedings (which may lead to the imposition of sanctions) in respect of unregistered sportsmen and -women. The CPLD interprets this obligation to mean sportsmen and -women not registered with French federations and therefore applies it to foreign athletes.

The Evaluation Team tried to discuss this point with the CPLD’s Secretary General, who considers that the law imposes on the CPLD an obligation to punish foreign athletes whose samples collected in France test positive if the international federation does not impose any sanction.

The Evaluation Team welcomes the fact that the law enables sportsmen and –women outside the traditional sports organisations to be subjected to the same rules as registered athletes.

However, the Evaluation Team does not consider it necessary to apply the law to foreign athletes affiliated to their national sports federation if the latter imposes a penalty under the supervision of the competent international federation. The penalty imposed by the CPLD only applies in France (ban on participating in sports events in France) but the “one offence, one sanction” principle should also be applied in doping cases.

The Evaluation Team reserves its position on the CPLD’s competence concerning foreign athletes who are not punished by their national federation in the case of a positive sample.

The CPLD should not impose sanctions on foreign athletes unless their federation has not done so.

Comments by France

The principle of equality before the law is one of the most important in French constitutional law. This being the case, it is necessary to take into consideration the factors that respect this principle.

3. *Moreover, the Parties shall encourage their sports organisations:*

- a. *to introduce, on an effective scale, doping controls not only at, but also without advance warning at any appropriate time outside, competitions, such controls to be conducted in a way which is equitable for all sportsmen and sportswomen and which include testing and retesting of persons selected, where appropriate, on a random basis;*

The Ministry of Sport carries out a large number of anti-doping checks a year (8000) in all sports. The Ministry is the body that requests most of these checks, which are conducted by its regional directorates. These receive instructions concerning a number of compulsory checks (requested by the federations for major sporting events) but are free, with regard to a certain quantity of checks, to choose other competitions or coaching programmes to run checks. Each month, the central departments of the Ministry of Sport directly order the taking of between 100 and 120 samples.

The regional directorates’ choice of checks to be carried out is not based on objective criteria or random selection. There is no genuine planning for these checks nor any proper determination of the target groups.

The regional directorates do not receive from the CPLD the figures for the number of positive cases in the region for each sport, and this makes it difficult to assess the situation and plan targeted checks for the coming months or years. The number of positive cases constitutes information of paramount importance for drawing up a national anti-doping plan.

In addition, this can confuse the public. For example, the CPLD announces during the Tour de France that there have been a certain number of positive samples and at the end of the event only one positive case is announced. The public then wonder whether things are being concealed from them and the event loses some of its credibility.

The Evaluation Team considers that too many people know about future unannounced checks.

At the beginning of 2003, the Sports Minister wrote to the regional directors to explain to them the ministry’s policy concerning checks, namely to give priority to unannounced checks so that they make up at least 50% of those carried out and to carrying out checks in professional sports, especially football and rugby, and on sportsmen and –women likely to be selected for the Athens Olympics.

The statistics do not indicate the number of out-of-competition tests carried out in each sport over the year.

All sportspeople likely to be selected for the next Olympic Games will be tested at least once, which is a good thing in theory. However, since there is no system of locating athletes, out-of-competition tests are in practice mainly conducted at gatherings of selected athletes or at coaching sessions run by the federations and not at the sportspeople's usual training places.

The Evaluation Team considers that, in terms of the number of checks, the laboratory's present capacity (see page 21 of the national report and page 8 of this report) is equivalent to the tests France should conduct at national sports events. This number, when added to the checks at international sports events, would thus be sufficient for a country like France.

Two solutions can be envisaged:

- increase the national laboratory's capacity to permit a larger total number of checks;
- or amend the law to enable some of the samples to be analysed abroad in another WADA-accredited laboratory.

The Evaluation Team considers there is no national anti-doping plan that establishes priorities based on the various risk groups, the ideal percentage of out-of-competition checks, etc. France should review its arrangements for planning checks.

The Evaluation Team is of the opinion that the CPLD should communicate the number of positive cases to the various parties concerned. It advises the CPLD to abandon the term "positive case that did not give rise to sanctions", which is too ambiguous, and simply adopt the two internationally recognised terms "positive sample" and "positive case".

A system of establishing the whereabouts of athletes should be set up so that not only the places where they are training during the coaching sessions are known but also all their other training places during the season.

Comments by France

The law requires the competent administrative authorities as well as the federations, sports groupings and sporting establishments to provide the MJSVA and the CPLD with "all information relating to the preparation, organisation and running of training sessions, competitions and sports events". The MJSVA decided in January 2004 to have all sportspeople with the potential to be selected for the Athens Olympic Games fill in a sheet indicating their whereabouts so that proper unannounced doping checks can be carried out.

The CPLD agrees to abandon the term "positive case that did not give rise to sanctions" in favour of a distinction between "positive sample" and "positive case".

- b. to negotiate agreements with sports organisations of other countries permitting a sportsman or sportswoman training in another country to be tested by a duly authorised doping control team of that country;*

France has signed a number of agreements with organisations in other countries in order to be able to subject a French sportsperson training in one of these countries to a check, which will then be carried out by an anti-doping team duly authorised by that country, but it has not yet signed the Additional Protocol to the Anti-Doping Convention.

The Evaluation Team has, however, been able to establish that, in practice, very few checks are conducted abroad. A French sportsperson can thus quietly prepare abroad for months without being tested, unless WADA or the international federation carries out a check.

The Evaluation Team consequently urges France – for as long as it has not signed the Additional Protocol to the Anti-Doping Convention– to have more unannounced checks carried out on French athletes training abroad.

- c. *to clarify and harmonise regulations on eligibility to take part in sports events which will include anti-doping criteria;*
- d. *to promote active participation by sportsmen and sportswomen themselves in the anti-doping work of international sports organisations;*

The Ministry of Sport, the French sports federations and the CNOSF urge sportspeople to participate actively in the fight against doping conducted by the international sports organisations.

- e. *to make full and efficient use of the facilities available for doping analysis at the laboratories provided for by Article 5, both during and outside sports competitions;*

France makes full use of its laboratory's capacity but, as the Team has already said, one weakness is that that capacity determines the total number of samples to be analysed.

- f. *to study scientific training methods and to devise guidelines to protect sportsmen and sportswomen of all ages appropriate for each sport.*

Medical supervision

(See also remarks on Article 7.2.(a))

The medical supervision corresponds to public health examinations and its aim is to protect the sportsperson's health. In the Team's opinion, it could be an additional and indirect way of combating doping.

One of the problems mentioned by the CNOSF's Medical Committee is that a professional sportsperson showing signs of doping can be suspended by the occupational medicine staff, while no ban is possible in the case of amateur sportspeople. The doctor cannot prohibit them from engaging in their sport and can only warn them about the risks they are running.

However, some federations' medical officers consider they are defenceless vis-à-vis professional sportspeople who want to take part in competitions even though they would be well advised not to do so. Doctors cannot legally contraindicate sporting activities, and medical confidentiality protects the identity of athletes with abnormal parameters. The Evaluation Team therefore noted during the meetings that doctors were calling for a charter to be drawn up stipulating that a sportsperson shall undertake to communicate the results of medical supervision and for the establishment of an inter-federation committee of experts to take the necessary decisions.

One proposal made by the Sports General Conference (Etats Généraux du Sport) was the creation of a post of a full-time medical director within each federation, at the same level as the national coach (*directeur technique national* – DTN) for the particular sport. It appears to us that this would result in the state incurring even more expenditure, and it is not a suggestion to be adopted since it would make medical monitoring, which is already highly advanced in France, even more cumbersome, except perhaps for the very large federations.

The Evaluation Team is of the opinion that the federations' doctors should be able to issue certificates of unfitness to engage in sports, in the light of long-term medical supervision, without there being a need to draw up a charter or set up a new committee of experts. This naturally necessitates a review of the legislation concerning medical supervision, which has up to now not been designed as an instrument of enforcement. It would also be desirable to have a regular assessment of the benefits of medical supervision in relation to its costs.

Since the data collected is piecemeal, a long-term research project would be very important for studying the effects of high-level sports on the athletes' health and perhaps taking better targeted measures with respect to the fight against doping in the future.

Comments by France

The MJSVA and the CPLD would like it to be remembered that medical supervision was introduced to protect the athletes' health and not as an instrument for detecting doping and punishing the offenders; they recognise, however, that appropriate action in the form of a temporary or permanent ban on participating in the sport concerned must be taken as a result of an unfavourable medical report.

In connection with the implementation of the organic law on the financial laws that will come into effect in 2006, the nature of the medical supervision has recently been modified to concentrate on the examinations that are essential to achieve greater benefits a lesser cost.

Article 8

International co-operation

1. *The Parties shall co-operate closely on the matters covered by this Convention and shall encourage similar co-operation amongst their sports organisations.*
2. *The Parties undertake:*
 - a. *to encourage their sports organisations to operate in a manner that promotes application of the provisions of this Convention within all the appropriate international sports organisations to which they are affiliated, including the refusal to ratify claims for world or regional records unless accompanied by an authenticated negative doping control report;*
 - b. *to promote co-operation between the staffs of their doping control laboratories established or operating in pursuance of Article 5;*
 - c. *to initiate bilateral and multilateral co-operation between their appropriate agencies, authorities and organisations in order to achieve, at the international level as well, the purposes set out in Article 4.1.*
3. *The Parties with laboratories established or operating in pursuance of Article 5 undertake to assist other Parties to enable them to acquire the experience, skills and techniques necessary to establish their own laboratories.*

This article is mainly subject to the authority of the state (as provided for by Article 4.4), since the sports organisations only play a subsidiary role. The French national report does not seem to reflect the depth of the international co-operation in the fight against doping conducted by France.

The Additional Protocol (ETS 188) to the Anti-Doping Convention has not yet been signed by France. However, the Evaluation Team was pleased to learn that the French Government is prepared to do so, as it promised in Warsaw in September 2002. It is simply a matter of being able to make the practical arrangements with the minister for the instrument to be signed.

France has signed many co-operation protocols with other countries in the area of doping checks.

France participates in an exemplary manner in the various institutions for international co-operation on doping, at Council of Europe, European Union and World Anti-Doping Agency levels.

Mention must also be made of the Euro-Mediterranean co-operation engaged in by France, Portugal, Spain, Morocco and Tunisia to help other countries to organise their anti-doping systems.

The Evaluation Team calls on France to sign as soon as possible and ratify the Additional Protocol to the Anti-Doping Convention.

Article 9

Provision of information

Each Party shall forward to the Secretary General of the Council of Europe, in one of the official languages of the Council of Europe, all relevant information concerning legislative and other measures taken by it for the purpose of complying with the terms of this Convention.

France replies each year to the questionnaire on the national anti-doping programmes in the Monitoring Group's database. However, two types of information currently pose a problem and should be considered:

- the figures on the national budget devoted to the fight against doping should distinguish between the cost of the campaign in the traditional sense and the costs of the medical supervision of athletes (about 6 million). Moreover, the figures communicated by France in the annual questionnaire relate to operating expenditure and do not cover the functional costs of this operation;
- France does not provide figures for the number of positive cases requested in the questionnaire but only those for positive samples, which is not the same thing.

This prevents a true international comparison.

The Evaluation Team therefore considers that the requirements of Article 9 are met but calls on France to provide more precise details in the future of a national budget devoted to combating doping and to supply it with figures for the number of positive cases and not positive samples.

General conclusions and recommendations of the Evaluation Team

The evaluation visit took place at a very favourable moment: the Sports Minister, Mr Jean-François Lamour, had begun a consultation process aimed at examining the anti-doping law of 1999, the so-called "Buffet Law", in the light of subsequent developments, especially at the international level following the adoption of the World Anti-Doping Code by the World Anti-Doping Agency (WADA) and France's signing of the Copenhagen Declaration on 5 March 2003. These two texts call for a revision of legal provisions for the sake of consistency in France's undertakings in this area.

The Evaluation Team's task is, of course, not to comment on this aspect of the fight against doping in France, since it is outside the obligations to be met in connection with the Anti-Doping Convention as such. However, it is certain that the will to harmonise this campaign at the international level (a will clearly displayed in the text of the Convention) is considerably strengthened by the acceptance of the World Anti-Doping Code and the Copenhagen Declaration. The preparation of the new international anti-doping convention at UNESCO is evidence of this, and France is playing an important role here.

Developments are thus such as to give additional impetus to the possible revision of the law. Our report echoes this several times at the appropriate places.

The Evaluation Team concludes that France meets all the obligations of the Convention. The recommendations below, which are set out in order of importance, would contribute to optimising the national system.

The Evaluation Team did not wish to go into the details of a new organisation at the national level but it is possible that a number of recommendations could be best reflected in the creation of a national anti-doping agency.

Priority	Recommendation	Body responsible
1	With regard to France's adoption of the list of doping substances, the application of the 1999 Law is too restrictive. The Law should be modified in order to base action solely on the Monitoring Group's list to ensure that the dates of the adoption of the list in France and at the international level coincide.	Ministry of Sport (MS)
2	<p>A national anti-doping plan should be prepared annually. This should be based on a number of objective criteria: the definition of various risk groups in the different sports, the physical demands of each sport, the potential effect of the improvement in performance that doping may have, the number of athletes listed in the database for each sport and, of course the evaluation of the results of the implementation of the previous year's national anti-doping plan.</p> <p>The majority of checks, both in and out of competition, should be decided by targeting sports and athletes "at risk" and by random selection, using software , in such a way as to be less predictable.</p>	This plan should be prepared by the CPLD, or a national anti-doping organisation, with a contribution from the sports federations and the Ministry of Sport.
3	It is important to fix a percentage each year (around 50%) of out-of-competition checks that are really unexpected, preferably without any notice being given. This percentage should be higher than it is at the moment (19%) and target athletes whose medical supervision reveals some anomalies.	CPLD, MS or NADO
4	France should adapt its anti-doping legislation to facilitate international co-operation (it should recognise the other WADA-accredited laboratories, for example) and sign the Additional Protocol to the Council of Europe's Anti-Doping Convention.	MS
5	The French anti-doping system is very complex and involves many players, so it is essential to improve co-ordination between the different areas (national anti-doping plan, education, research, combating trafficking, medical prevention units). As an independent body, the CPLD should in practice be responsible for co-ordinating the anti-doping system.	CPLD or NADO
6	The statistical data must indicate precisely the percentages of out-of-competition checks carried out and the percentages of actual positive cases in each sport. It is essential for a distinction to be made between "positive samples" and "positive cases" in order to provide the general public with more accurate information.	CPLD

7	Medical supervision, which is funded to the tune of €915,000 by the Ministry of Sport, should not be completely separated from the fight against doping. The results of long-term medical supervision should enable federation medical officers to issue, if necessary, certificates of unfitness to engage in sport. The law needs to be amended for this purpose.	MS
8	France should take measures to introduce a system for establishing athletes' whereabouts.	MS or NADO
9	Classes on doping should be introduced into training courses leading the qualification of state-registered instructor and in university degree courses (especially for teachers of physical education, and medicine) from the beginning of the course.	Ministry of Education and Ministry of Sport
10	With respect to education and information, a national standard-setting and co-ordinating body should be appointed. Its role would be to provide a better definition of the target groups, co-ordinate action between the various partners and assume responsibility for assessing the action taken.	CPLD, MS or NADO
11	Information and education campaigns should also target the users of sports halls (gym clubs).	CPLD, MS or NADO
12	Doctors responsible for taking samples should be completely independent of the sport being checked.	MS or NADO
13	France should take measures to be able to have its anti-doping system certified ISO 9001:2000.	MS or NADO
14	The CPLD should no longer impose sanctions on foreign athletes punished by their own federation.	CPLD

Composition of the Evaluation Team

- Dr Luis HORTA, Director of the LAD (Lisbon anti-doping laboratory), Portuguese Institute for Sports, and Chair of the Monitoring Group's Consultative Group responsible for scientific issues;
- Dr Anik SAX, Head of Department at the Ministry of Education, Professional Training and Sports, Luxembourg, delegate to the Monitoring Group;
- Mr Marco ARPINO, Head of the Anti-Doping Bureau of the Italian National Olympic Committee, delegate to the Monitoring Group;
- Mr George WALKER, Head of the Sport Department , DG IV, Council of Europe
- Ms Marie-Françoise GLATZ, Principal Administrative Assistant, Sport Department, DG IV, Council of Europe

Programme of the evaluation visit

Paris, 3-5 December 2003

Wednesday, 3 December:

Venue: Ministry of Sport, 78 rue Olivier de Serres, 75015 PARIS

Morning

- Breakfast with Mr Jean François LAMOUR, Minister for Sport; Mr Jean François VILOTTE, the Minister's Principal Private Secretary; and Mr Valery GENNIGES, adviser on European and international affairs

- Talks with Ms Dominique LAURENT, Director of Sport; Ms Chantal BRAULT, Deputy Director responsible for territorial action; Mr Jean-Christophe LAPOUBLE, author of the national report

Afternoon

- Discussion with Mr Roger PAOLETTI, responsible for relations with the international federations concerning the implementation of doping checks (DS/5)

- Talks with Ms Annette PERRISSOUD, assistant to the Head of the Bureau for the Protection of Sportspeople and the Public (DS/5), Dr Bernard SIMON, responsible for doping questions at the international level for DS/5 (Council of Europe, WADA, bilateral agreements), Ms Rochanak MIRFENDERESKI, pharmacist, responsible for doping questions at the international level for DS/5 (Council of Europe, bilateral agreements) and the national level (list of doping substances)

- Discussion with the French judo team at the National Sports Institute (trainer, athletes)

Thursday, 4 December

Morning

1. Venue: National Doping Detection Laboratory (LNDD), 143 avenue Roger Salengro, 92290 Châtenay-Malabry. Tel: 01 46 60 28 69

- Discussion with Professeur Jacques DE CEAURRIZ, Director of the LNDD, and tour of the laboratory

2. Venue: French National Olympic and Sports Committee (CNOSF), 1 avenue Pierre de Coubertin, 75013 Paris. Tel: 01 40 78 28 00

- Talks with Mr Jean-Pierre CLEMENÇON, Head of the office of the Chair of the CNOSF, Mr Patrick MAGALOFF, Director of the Sports Health Foundation of the CNOSF, Dr Maurice VRILLAC, Chair of the CNOSF's Medical Committee, Dr Philippe DEYMIE, medical officer of the French Athletics Federation, and a top sportsman: Mr Hervé DAGORNE

Afternoon

Venue: Ile de France Regional and Departmental Youth and Sports Directorate (DRDJS), 6/8 rue Eugène Oudin , 75013 Paris. Tel: 01 40 77 55 00

- Discussion with Mr Jean-Pierre VERDY, co-ordinator of the regional unit for the fight against trafficking in doping substances, representatives of the customs service and the judiciary, and a doctor responsible for taking samples

Friday, 5 December

Morning

Venue: Council for the Prevention of Doping (CPLD), 39, rue Saint-Dominique, 75007 Paris.
Tel: 01 40 62 76 76

- Talks with Mr Marc SANSON, President of the CPLD, Mr Philippe ROUX-COMOLI, Secretary General, Professeur Michel RIEU, scientific adviser

Acknowledgments

The Evaluation Team wished to thank the French authorities warmly and sincerely for the excellent organisation of the visit and the quality of their hospitality, for the national report sent to them and for the spirit of total trust and transparency that prevailed during the entire visit.

The assistance and the permanent presence of, in particular, Ms Rochanak MIRFENDERESKI and Mr Bernard SIMON, who were with us throughout the visit and the discussions, made a major contribution to the effectiveness of the mission.

The Team wish to express its thanks to the following persons in particular:

- Mr Valéry GENNIGES, adviser on European and international affairs at the Ministry of Sports;
- Ms Dominique LAURENT, Director of Sport, and the staff of her department who received us;
- Mr Marc SANSON, recently appointed President of the Council for the Prevention of Doping (CPLD), who accorded us his first official engagement;
- Mr Philippe ROUX COMOLI, Secretary General, and Dr Michel RIEU, Scientific Adviser at the CPLD)
- Mr Jacques de CEARRIZ, Director of the National Doping Detection Laboratory;
- Mr Jean-Pierre BOUCHOUT, Ile de France Regional Director for Youth and Sport, and all his colleagues at the regional unit for the campaign against trafficking in doping substances;
- Mr Denis MASSEGLIA, Secretary General of the French National Olympic and Sports Committee (CNOSF), Mr Patrick MAGALOFF, Director of the Sports Health Foundation, and medical and sports representatives;
- as well as everyone involved in the organisation of the visit and the evaluation work.

Note

This report was sent on 5 April 2004 to the Ministry of Youth, Sport and 'Vie Associative' thus enabling the authorities of the visited country to correct any factual error and to offer any comments on the opinions made by the examining group.

In a letter dated 21 July 2004, the Sports Director of the Ministry took up this invitation. Her letter is reproduced in its entirety below. Annexed to this letter were some "Observations from France". Rather than offer further comments on these Observations, or amend its text, but considering that they should be taken account of, the examining group agreed to incorporate them into the text, at the appropriate place and in a different font.

The examining group takes this opportunity of once more applauding the open and constructive reaction from France and is pleased to note that several of its recommendations are already in the process of being implemented.

Annex- Letter from Dominique Laurent, Director of Sports, to Mr George Walker

SPORTS DIRECTORATE
Sub-Directorate Territorial Action

PARIS, 21/07/04

Bureau for the Protection of Sportspeople and the Public
DS/5 N°

Matter being dealt with by:
Dr Bernard SIMON
Tel: 01 40 45 96 83

Dear Mr Walker

Thank you for the excellent and highly relevant evaluation report you sent me concerning France's compliance with its commitments under the Council of Europe's Anti-Doping Convention.

The report not only shows that France is fully in compliance with its commitments under the Convention, but also has the merit of pointing out the positive aspects of, and limits to, the French anti-doping system. I have not noticed any errors but would stress that the number of doping checks carried out is broadly comparable to that in other State Parties to the Convention; that, if anything, international co-operation both with regard to bilateral agreements and France's active participation in the international bodies (WADA, Council of Europe, IIGASD) has been played down; and that the "transversal" preventive aspect of the fight against doping deserved greater prominence given the role played by MILDT (Interministerial Mission for the Fight Against Drugs and Drug Addiction) in this area.

The CPLD has provided me with its observations, most of which concur with my own. It stresses its willingness to participate in making the improvements recommended by the evaluation report and is ready to work on the organisation of doping checks and guarantee that its actions are more appropriate in the international context.

I should like to point out that several of your remarks have already been acted upon in the form of measures decided upon in January 2004 by the Minister for Sport:

- the establishment of a system that enables the whereabouts of sportspeople to be established,
- an increase in the number of checks, including at individual training areas,
- the establishment of an interministerial unit for exchanges of information on trafficking in doping substances.

I confirm that the recommendations made by your Evaluation Team accord with the conclusions of the broad consultation that the Minister conducted in November 2003, namely the need to amend the Law of 23 March 1999 relating to the protection of sportspeople's health and to the fight against doping. This law now forms part of the Public Health Code.

The review currently being undertaken by the Sports Directorate at the Minister's request with a view to drawing up a draft law also takes account of the need to design an anti-doping system that, on the one hand, meets international requirements – World Anti-Doping Code, international convention under the aegis of UNESCO – and, on the other, clarifies the apportionment of responsibilities among the people involved in the fight against doping at the national level.

I enclose details of France's main observations to be incorporated into the Evaluation Team's report on France's compliance with its commitments under the Council of Europe's Anti-Doping Convention.

Yours sincerely,