

**MONITORING GROUP (T-DO)**

ANTI-DOPING CONVENTION

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 31 August 2018

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# **Recommendation on the operational independence of National Anti-Doping Organisations**

**Adopted by the Monitoring Group following the  
written consultation process via  
T-DO Circular Letter 2018-10**

**WHEREAS**

The Monitoring Group of the Anti-Doping Convention of the Council of Europe (“the Convention”) under the terms of Article 11.1.d of the Convention:

*Having regard* to Article 3 of the Convention, which obliges States Parties to “ensure that there is practical application” of the Convention, and “in particular that the requirements of Article 7 are met by entrusting the implementation of some of the provisions of this Convention to a designated governmental or non-governmental sports authority or to a sports organisation”;

*Recalling* its continuous and strong determination to fight against doping and to protect clean sport;

*Recalling* that the Conference of European Ministers for Sport in 2016 recognised “the crucial role of National Anti-Doping Organisations (NADOs) in the implementation of the 2015 World Anti-Doping Code and the need to ensure their independence in operational decisions and activities” and agreed that consideration be given to “promoting further autonomy of NADOs with a view to expanding their scope of responsibilities and providing them with the resources needed to implement the Code”;

*Recalling* that the Monitoring Group agreed as part of the Mid-Term Strategy for 2015-2017 to “develop, with a view to giving clear interpretations to the relevant provisions of the Convention, a recommendation on promoting the independence of NADOs”;

*Acknowledging* the fact that all States Parties to the Anti-Doping Convention signed the Copenhagen Declaration on Anti-Doping in Sport (2003) and/or are bound by the International Convention against Doping in Sport (UNESCO, 2005), and are therefore concerned by the measures required by the World Anti-doping Code;

*Taking into consideration* Article 22 of the World Anti-Doping Code (2015) and in particular Article 22.5 (Each Government that does not have a National Anti-Doping Organization in its country will work with its National Olympic Committee to establish one) and Article 22.6 (Each government will respect the autonomy of a National Anti-Doping Organization in its country and not interfere with its operational decisions and activities);

*Having regard* to Article 7 of the Convention, which requires States Parties to encourage their sports organisations to adopt harmonised measures against doping in sport (this commitment also being reflected in the UNESCO Convention on Anti-Doping);

*Noting* that Governments may create a single National Anti-Doping Organisation which will have the function of ensuring that sports organisations comply with the Code;

*Committed to* promoting equal rights for athletes by ensuring that National Anti-Doping Organisations fulfil their obligations as Code Signatories in a manner that respects the principles of good governance;

*Recalling* that the Monitoring Group is responsible for assessing the measures taken by the States Parties in order to comply with the provisions of the Convention

**THE MONITORING GROUP OF THE ANTI-DOPING CONVENTION OF THE COUNCIL OF EUROPE RECOMMENDS STATES PARTIES TO THE ANTI-DOPING CONVENTION AS FOLLOWS**

**TO:**

- (a) **provide an adequate foundation either in law or using other measures for a single<sup>1</sup> National Anti-Doping Organisation (“NADO”) to fulfill all of its Code-mandated (and Convention-related) responsibilities, consistent with broader legislation;**
- (b) **respect the autonomy of the NADO and ensure that its operational decisions and activities will not be interfered with;**
- (c) **ensure that the NADO’s governance structure restricts individuals with any actual or potential conflict of interest from having any role or function in the NADO’s executive or operational decision-making in relation to anti-doping investigations, case management, test distribution planning and execution, and prosecuting anti-doping rule violation matters before hearing panels;**
- (d) **require that a NADO’s rules, policies and operational activities comply with the Code and that a NADO’s compliance with its Code obligations can be monitored and enforced by the World Anti-Doping Agency;**
- (e) **establish oversight and accountability measures in respect of a NADO’s use of public funds that do not unreasonably affect a NADO’s independence;**
- (f) **provide a level of funding that allows a NADO to carry out the duties required by the Convention, the Code and the International Standards on an effective scale;**
- (g) **adopt policies that reflect the overriding principle that all NADOs should maintain and promote the principle of good governance. These policies, as applied to NADOs, include –**
  - ***Accountability***: NADOs must report, explain and be answerable for the consequences of decisions they make to their stakeholders (a “stakeholder” being a person or organisation that is affected by the NADO’s decisions).
  - ***Transparency***: Stakeholders should be able to follow and understand the decision-making process. This means that they will be able to clearly see how and why a decision was made. NADOs should make and publish reports as to their activities, strategy and expenditure on at least an annual basis.
  - ***Rule of law***: NADO decisions must be consistent with the Code and national laws.
  - ***Responsiveness***: NADOs should always try to serve the needs of all their stakeholders while balancing competing interests in a timely, appropriate and responsive manner.
  - ***Inclusivity***: All stakeholders should feel that their interests have been considered by a NADO in its decision-making process.
  - ***Efficiency***: NADOs should implement decisions and follow processes that make the best use of the available people, resources and time to ensure the best possible results for their stakeholders.
  - ***Conflicts***: NADOs should at all times avoid conflicts of interest in respect of their operational activities.

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<sup>1</sup> Pursuant to its Constitution and institutional framework, Belgium reserves the right to establish more than one National Anti-Doping Organisations to fulfil its obligations under the Code and related to the Convention.

**(h) adopt policies that foster an effective working relationship between Government, the NADO and sport governing bodies.**

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The Guidance Notes below are included to assist States Parties in their implementation of the Recommendation, but are not an integral part of the Recommendation.

*Recommendation (d): NADOs are accountable to Governments in respect of their activities and must carry out their publicly-funded activities subject to Government oversight and financial accountability. A NADO's failure to comply with its responsibilities can have disastrous effects upon clean athletes and the wider investment made in sport by Governments. Given this, Governments may wish to pay close regard to the wider impact on sport and athletes of a NADO failing in its Code responsibilities when making provision for the governance of a NADO, for example by way of its non-executive Board. Governments will wish to balance the desire to allow the NADO the autonomy necessary for it to carry out its activities with the need to ensure that the NADO fulfils its functions and does not (through any non-compliance) jeopardise the Government's wider public health and sport strategies.*

*Recommendation (e): Governments are encouraged to take a broad view as to what constitutes "adequate funding" for a NADO. Governments should examine the issue of "adequate funding" on the basis of relevant factors such as funding being proportionate to the number of elite level athletes within a nation, the funding provided to sport by Government, and the integration of anti-doping into a broader sport and public health strategy, and consider whether an independent assessment of "adequate funding" is required.*

*Recommendation (f): Governments will recognise that NADOs cannot retain the confidence of their stakeholders if they fail to uphold good governance principles. For example, a NADO's officers acting in breach of their obligations to avoid conflicts of interest – howsoever they arise – will undermine the NADO's ability to function.*

*Recommendation (g): a NADO will be in the optimum position to carry out its activities if it has a mature, respectful and functioning relationship with sport governing bodies. NADOs will best fulfill their roles when they are able to utilize the in-depth knowledge, familiarity and expertise of a sport that governing bodies and their personnel possess. Governments are recommended to take practical steps to ensure that information about sport participants, performance, risk and trends is shared between sport governing bodies and a NADO in a manner that provides a NADO with the most complete picture of a sport and athletes.*

*Commercial service relationships between NADOs and national sport governing bodies present an obvious risk of conflict of interest and Governments are recommended to exercise caution in encouraging these relationships. NADOs acting as service providers to national sport governing bodies present an obvious risk to their independence: a NADO cannot be even-handed and impartial with a body from which it receives funding. A NADO should not provide a "commercial" sample collection service to sport if it is excluded from input into those who are tested. If a sport wishes to have exclusive determination as to the athletes who are tested a NADO should refer to contract to a private sample collection agency.*