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T-DO (2007) 5

Anti-Doping Convention (T-DO)

Follow up Report

by Switzerland on the recommendations of the Monitoring Group of the Anti-Doping Convention

Introduction

Switzerland signed the Anti-Doping Convention of the Council of Europe (ETS No. 135) on 16 November 1989. The convention was ratified on 5 November 1992 and came into force on 1 January 1993.

In conjunction with the project involving "compliance with commitments", the Federal Office of Sports in 2003 commissioned a report by external experts regarding implementation of the Council of Europe convention in Switzerland. The report covered the relevant articles of the convention (Articles 1 through 9) and was submitted to the Secretariat of the Council of Europe at the end of 2003.

During 6-8 April 2004, Switzerland welcomed an evaluation team from the Council of Europe. It reported on its experience with convention implementation in Switzerland. On 9 July 2004 it presented its report, which was published as report number "T-DO (2004) 6 final".

According to the rules laid down by the CDDS Secretariat, as approved by the group on "compliance with commitments" (CDDS (2003) 59), signatory countries agree to draft a follow-up report on implementation of the recommendations of the group of experts within two years.

Responsibility for anti-doping efforts in Switzerland has been transferred to the Swiss Olympic Association (also referred to as Swiss Olympic), which is the umbrella organization for sports in Switzerland, as well as to the Federal Office of Sports. Since the convention came into force, a three-pillar concept involving controls/sanctions, information/prevention and research has been established. Swiss Olympic is responsible for controls and sanctions, whereas the Federal Office of Sports is in charge of information, prevention and research. This follow-up report describes the development of anti-doping efforts in Switzerland and the steps taken by the federal government and by Swiss Olympic.

To simplify matters, this report deals not only with the steps that have been taken but also includes the articles of the convention, the recommendations of the group of experts, and details concerning implementation.

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.

Conclusion: Switzerland implements Article 1 in a coherent and satisfactory fashion.

Recommendation: Switzerland should continue its processes of continual review and assessment with a view to improving existing, and developing new, instruments for the anti-doping sector.

Follow-up: Over the past two years, Switzerland has continued to follow its original strategy in implementing anti-doping programmes. In particular, another national survey at the end of 2004 and a survey of elite Swiss athletes inquired into opinions on doping and suitable anti-doping measures. These data are then used as a basis for considerations regarding the improvement of anti-doping efforts in Switzerland.

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.*

Conclusion: Article 2, with the exception of 2.1.c, is fully implemented by Switzerland.

Recommendation: with regard to Article 2.1.c, Switzerland should adopt, for doping control purposes, a wider definition than the current limit to elite level athletes of "persons who participate regularly in organised sports activities". (cf Article 7.3.a) (1)

Follow-up: In recent years, the Anti-Doping Commission of Swiss Olympic has made an effort to implement this recommendation. As part of the existing control program, more controls were carried out in connection with junior athletes and also at popular sporting events. In 2005, for example, a total of 102 out of 602 controls at competitions (= 17%) and 201 out of 1,112 non-competition controls (= 18%) involved junior athletes. However, the main focus of doping controls continues to be on elite athletes. Controls in the area of fitness sports and fitness centers, on the other hand, cannot be carried

out for legal reasons. Doping controls can only take place within associations that are affiliated with Swiss Olympic (currently 82 associations are subject to the Swiss Olympic doping statute and its implementation provisions).

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.*

Conclusion: Switzerland fully implements the spirit of Article 3, and does so in accordance with its "sport-political" traditions.

Recommendation: The Swiss authorities should encourage a more active involvement in anti-doping by the Federal Office of Health.

Follow-up: Doping problems are still basically viewed in Switzerland as a problem of elite sports. Therefore anti-doping efforts continue to be the responsibility of Swiss Olympic in the private legal sphere and of the Federal Office of Sports in connection with public law.

In 2005, a strategic cooperative arrangement was established between the Federal Office of Sports and the Swiss Federal Office of Public Health to promote health through physical activity and sports. A sub-area of this programme involves doping problems. The question was also examined whether a joint institute for health prevention should be created that could include doping prevention. However, this idea is not being pursued further at present.

Cooperation with the customs authorities and "Swissmedic", the Swiss Agency for Therapeutic Products, has been excellent.

The issue of doping in popular sports and in the fitness arena is still unresolved. However, these concerns are being raised again in conjunction with the discussion about improving the legal anti-doping regulations and the possible establishment of a national anti-doping agency.

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.*

Conclusion: The implementation of Article 4.1 demonstrates the good intentions of the Swiss authorities, and their willingness to adopt legislative measures appropriate for the aim. However, the law seems to have had relatively little practical impact.

Recommendations: As is already recognised by Swiss authorities, cantonal prosecutors need more information on how to follow up cases deriving from the 2002 law. Customs could concentrate on monitoring the traffic in Class I substances. Consideration should be given to providing more legally watertight and operational definitions of two terms under the said law: "the entourage" and "personal

consumption” (to make the terms more precise and useable); and including “possession” (to forbid possession without medical justification) amongst the prohibited acts. The police are encouraged to investigate possible offences under the 2002 law at fringe and body-building gyms. (2)

Follow-up: Cooperation with the customs authorities and "Swissmedic" (Swiss Agency for Therapeutic Products) has led to a simplification of procedures. For example, customs authorities will now concentrate primarily on the "heavy" doping agents, and if they find anabolic steroids they will not need to determine whether the substance is being imported for medical reasons or for doping purposes. "Swissmedic" is the responsible investigative authority and may, whenever necessary, call in experts from the Federal Office of Sports.

In conjunction with the drafting of a parliamentary message on anti-doping measures, a group of experts is currently dealing with proposals for improving existing legal regulations. In this connection, the recommendations of the expert group of the Council of Europe will be incorporated.

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.*
 - 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.*
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.*

Conclusion: Switzerland fully implements Article 4.2. a, b and c.

With regard to Article 4.2.d the situation is less clear. The entry into force of the additional protocol should help to improve the situation.

Recommendation: that Switzerland ratifies the Additional Protocol as soon as possible. (4)

Follow-up: Switzerland ratified the Additional Protocol on 4 October 2004. It came into force on 1 February 2005.

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.*

Conclusion: Switzerland complies with Article 5 of the convention.

Recommendation: the Swiss authorities are encouraged to develop following an inclusive discussion process a clear long-term strategy for the anti-doping laboratory and its place in the national anti-doping programme. (9).

Follow-up: Anti-doping efforts in Switzerland involve different organizations that are independent from one another. The Anti-Doping Commission (ADC) is responsible for planning controls, carrying out controls and managing results. The Anti-Doping Laboratory (LAD) is responsible for analysis and research. And finally, the Disciplinary Chamber for Doping Cases is the court of first instance for sanctions. The laboratory is an important partner in Switzerland's anti-doping programmes. In order to improve coordination, a joint working group entitled "Science and Analysis" was formed in 2005. It includes experts from the Anti-Doping Laboratory, the ADC and the Federal Office of Sports. It has the following responsibilities:

- Interface between laboratory and ADC in the area of analysis and science for the purpose of enhancing technical expertise at both institutions and avoiding possible misunderstandings between ADC and LAD.
- Preparation of decisions for ADC in the area of analysis, particularly in connection with the interpretation of results (steroid profiles, follow-up tests, positive tests, etc.).
- Platform for exchanging information regarding development of regulations and provisions by other authorities and institutions (such as WADA, Council of Europe, IFs, etc.) in the area of analysis and science.
- Platform for exchanging information about possible joint research projects.

This approach functions well, but a longer-term strategy and particularly a longer-term research strategy with appropriate funding is not possible until a national agency has been created, which is currently under discussion. The prerequisite for this, however, is that the agency has adequate research funding.

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.*

Conclusion: The organisations in Switzerland are very active at the anti-doping education front. The educational activities run by FOSPO are very sophisticated, appreciated and thoroughly evaluated. The educational activities in Switzerland are in many aspects a good model for other countries. The

great number of the various educational initiatives makes it a challenge to evaluate them fully. The educational activities of the SOA, while numerous and laudable, appear to be less solidly based. A clear strategic plan involving all partners (including the Federal Office of Health) appears to be lacking on some occasions.

In summary the efforts are very impressive. It comes as no surprise that a number of other countries see the material produced by Switzerland as some of the best in this field and look for cooperation to use this know-how. Switzerland in this respect has a particular asset, since most of its education and information material is published in at least two languages (German and French, and often in English and Italian as well).

It is not a coincidence that Switzerland plays a leading role in the Monitoring Group's work on education and information, including the development of a draft World Anti-Doping Code standard on the subject.

Recommendation: the Swiss authorities are encouraged to maintain the high quality and standard of their work on education and information. Effectiveness would be further improved with an overall strategic plan involving all educational partners. (6)

Follow-up: A major change in the last two years has been the expansion of the website www.dopinginfo.ch. A drug database is now available online that allows users to determine whether drugs registered in Switzerland are on the current doping list. This database has been used heavily (in the first five months it had more than 13,000 inquiries).

A new survey of elite Swiss athletes in early 2006 focusing on information materials, quality of controls, and evaluation of anti-doping programmes revealed that the primary information resources for athletes (booklet, website and hotline) are very much appreciated and also utilized.

However, the teaching materials for schools (CDs and DVDs) must be updated. This is planned for 2007.

	Booklet		Hotline		Website	
	2003	2006	2003	2006	2003	2006
very important	47%	42%	39%	47%	26%	30%
important	50%	51%	43%	35%	60%	59%
rather not important	3%	7%	16%	17%	13%	10%
not important at all	0%	0%	2%	2%	1%	1%

Assessment of information resources as regards their importance (athlete surveys in 2003 and 2006)

On the other hand, the creation of a comprehensive overall strategy for information resources and teaching materials, a strategy that would include other partners, had to be deferred for capacity reasons.

- 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.*

Conclusion: Switzerland has made good efforts in anti-doping research, particularly in the context of education and information, but in the area set out in Article 6.2 of the convention, such efforts remain modest.

Recommendation: *Switzerland is encouraged to do more to raise the status of anti-doping research and to devise schemes for encouraging the research community to develop research proposals. (10).*

Follow-up: This recommendation could not be thoroughly implemented for financial reasons. Anti-doping research is being continued, especially in the areas of analysis and the social sciences (population surveys, evaluation research, etc.).

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.*
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;*
 - 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;*
 - c. *doping control procedures;*
 - 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;*
 - 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;*
 - f. *procedures for the mutual recognition of suspensions and other penalties imposed by other sports organisations in the same or other countries.*
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;*
 - 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;*
 - 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;*
 - 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;*
 - f. *to study scientific training methods and to devise guidelines to protect sportsmen and sportswomen of all ages appropriate for each sport.*

Conclusion: *The provisions of Article 7 are fully complied with in Switzerland.*

The Anti-Doping Committee and the Disciplinary Chamber have marked, since their creation in 2002, a huge improvement in the efficiency of the anti-doping programme in Switzerland, not least by giving much more credibility to this programme in the eyes of the athletes, the sports organisations and the public.

Recommendations:

For Article 7.2: Consideration should be given to enabling the ADC to act as a prosecuting authority and to appeal judgments from the Disciplinary Chamber. (8)

Follow-up: In conjunction with implementation of the WADA code, the Swiss Olympic doping statute was revised. In the course of this revision, the ADC was assigned the function of prosecuting authority, and the right to appeal judgments by the Disciplinary Chamber to the Court of Arbitration in Sport was granted.

For Article 7.3: Swiss Sports Federations should contribute more actively to the anti-doping programme and assume their share of responsibilities (for example, financial; educational). (7)

Follow-up: The main responsibility for anti-doping programmes will continue to lie with the Federal Office of Sport and the Swiss Olympic Association. Regular joint meetings on this topic are held with several of the larger associations.

Beginning in 2007, the services to be performed by Swiss Olympic in return for federal funding will be covered by a new agreement. With regard to anti-doping programmes, the agreement will specify that the individual sports associations will be required to enter into appropriate agreements with athletes and support personnel. If, in the event of a doping violation, an association is then unable to document that it has instituted the necessary preventive measures, its funding will be cut by Swiss Olympic.

For Article 7.3.a: We believe that the ADC should aim to increase its number of controls by say 250 per year over a period of four years. (1)
(see also Article 2.1.c)

Follow-up: The number of doping controls was increased to over 2,000 in 2005, a first for Switzerland. However, this put an excessive strain on resources (control planning, performance of controls, number of doping control personnel, results management, etc.). As a result, the control activities had to be cut back slightly in the current year. Thus the number of controls in 2006 will equal the level of 2003, according to estimates.

An increase in control activities, as provided in the recommendation, is not feasible with current financial and personnel resources.

Year	Competition	Out of competition	Total for own control plan	For third parties	Total
2005	602	1112	1714	373	2087
2006	612	781	1393	462	1855

Control activities in 2005 and 2006 (estimated total number). For third parties: controls on behalf of international sports associations or the WADA.

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.*

Recommendation for Article 8.3: The Swiss authorities could stimulate and provide better opportunities for the anti-doping laboratory to assist other Parties in the region (whether they have accredited laboratories or not) to acquire relevant laboratory skills. (11)

Follow-up: This recommendation is being implemented in certain instances. For example, the Federal Office of Sports is funding a joint project on the detection of Synacthene that is being carried out by the laboratory in Lausanne and by anti-doping authorities in New Zealand.

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.

Conclusion: Switzerland fully complies with article 9.

The Future

Summary of the reflections by the evaluation team:

The arguments discussed above (sustainability, transparency in managing possible conflicts of interest, new perspectives and obligations, coherence, cohesion and stability) tend to favour the proposal to set up a new independent national anti-doping organisation as an option that would contribute to uphold the high standards in Swiss anti-doping policy. A number of countries have gone down the route of establishing an independent national anti-doping agency and many have shown that this is a very promising model. But it is not the only model. The ethos and tradition of sports policy making and governmental-sport cooperation in Switzerland is of high standard and works efficiently already. Precedent is not a guide in this matter. But, in conclusion, the examining team feels that in view of the nature and depth of the interrogations being put on the table in a country which has already by almost all standards a highly performing national anti-doping system an independent agency is one sensible option.

Follow-up: The formation of an independent agency was first considered in 2003, but implementation was deferred for financial reasons. In recent years, the majority of countries in the western hemisphere have revised their national anti-doping structures and regulations. The predominant trend has been to establish independent national agencies in order to meet their obligations.

Work on establishing such an agency was therefore resumed by the Federal Office of Sports (FOSPO) in the autumn of 2005. The goal of the national agency is to combine the two areas of responsibility currently held by Swiss Olympic and FOSPO into one integrated anti-doping portfolio with a transparent management and cost structure.

Discussions about Switzerland's ratification of the UNESCO Anti-Doping Convention, about possibly establishing an independent national anti-doping agency, and about improving existing legal anti-doping measures have led to following steps in the current year, 2006:

- A business plan for a possible national agency has been created. It describes the current structures and responsibilities, the requirements for a modern anti-doping programme, two possible performance and job portfolios for a national agency, and the costs.
- A joint German translation of the UNESCO convention was established under the leadership of Germany and has undergone a preliminary review.
- A group of experts is investigating possibilities for improving the legal options for imposing penalties on people in the sports environment.
- The Federal Office of Sports was commissioned to develop a message "concerning ratification of the UNESCO International Convention Against Doping in Sport and creation of a National Anti-Doping Agency".

Work on the message should be completed in the spring of 2007 and will be followed by various consultation procedures involving other offices, the cantons, the political parties and interested organizations. The actual parliamentary debate is scheduled for 2008.

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