

MONITORING GROUP (T-DO)

ANTI-DOPING CONVENTION



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Anti-Doping Convention (T-DO)

Project on Compliance with Commitments

Respect by Germany of the Anti-Doping Convention

**Auto-Evaluation Report by Germany
Report by the evaluation team
Comments by Germany**

FINAL

Adopted at the 31st meeting of the Monitoring Group of the Anti-doping Convention

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A. Auto-evaluation report by Germany

1. Foreword

The thrill of competition encourages top athletes to deliver outstanding performances, usually accompanied by media coverage. However, competition requires rules and should be based on fair play as the key principle of sport. This ensures not only that performance becomes measurable and comparable but also that spectators, sponsors and the media continue to accept the sport. Therefore, an essential principle of sporting competitions is the prohibition of doping for which an extensive system of rules, the WADA Code, has been developed. For those who use doping deceive their competitors, the public and the organizers. Doping distorts the performance and undermines the ethic and moral values of sport, thus jeopardizing the credibility and public acceptance of sport as a whole.

The sports organizations are primarily responsible for detecting and punishing doping violations by athletes. The principle of strict liability (WADA Code) means that athletes caught for doping must prove the propriety of their behaviour. Since suspensions for doping prevent athletes from practicing their sport, they have a significant deterrent effect.

The Federal Government promotes top-level sport by providing considerable funding. It goes without saying that funding with taxpayers' money is provided on the strict condition that performance is "clean", i.e. in line with the rules of sport. For the Federal Government, compliance with the prohibition of doping is a key requirement for funding top-level sport. Hence, the state and national sport associations jointly pursue the goal of protecting the credibility and integrity of top-level sports. Without a common anti-doping approach both the sport itself as well as sport and health policy would be seriously damaged.

The Federal Government fights doping in two ways: The first concerns the funding of top-level sport and the National Anti-Doping Agency. Only those associations receive state funding which actively prevent doping and impose anti-doping obligations on their coaches, support personnel and athletes. To this end, they must comply with the requirements set out in the relevant grant approval. Second, the state is responsible for providing the legal framework for public health protection against harmful doping substances. In this respect, the government has adopted provisions under criminal law targeted in particular at networks of illegal producers, traffickers or distributors of doping substances, i.e. at the athlete's entourage. But athletes, too, may be held liable if they possess significant quantities of doping substances.

2. Introduction

This report gives an overview of different measures taken by the various stakeholders in Germany. It starts with a brief outline of the actual and legal situation of sport in Germany followed by a description of how national anti-doping organizations are involved. The introduction explains the structure of German anti-doping policies. The subsequent main part, which addresses the implementation of the Anti-Doping Convention (no. 3) and the Additional Protocol (no. 4) in Germany, refers to information given in the introduction.

2.1. The legal framework of sport and anti-doping policies in Germany

Germany has a long and rich club tradition. There are some 535,000 clubs of all kinds in Germany. They also play an important role in sport. For example, the German Olympic Sports Confederation (DOSB), a national sport association, covers some 91,000 sport clubs with a total of 27 million members.

The German club structure especially benefits from the separation between the state and sport enshrined in the German constitution, the Basic Law. By virtue of Article 9 of the Basic Law granting the freedom of association, sport associations and clubs enjoy a strong and autonomous position. The state can therefore influence sport associations in the field of doping almost exclusively through grant approvals. Since it funds almost all sport associations, the German government can make funding conditional on certain requirements which must be fulfilled to receive and retain state funding. Anti-doping provisions are included in Olympics agreements with German athletes, coaches and support personnel, and have long been part of grant approvals for German sport associations. Among other things, they specify that associations must implement the German NADA Code and punish Code violations.

This is not only an empty threat, as a case in 2008 demonstrated: After an athlete of a national team had refused to participate in a doping control, the responsible German association imposed a sanction which was not in line with the NADA Code. In particular due to the withdrawal of state funding the sport association re-opened the proceedings against the athlete who did not properly follow the anti-doping rules so that the CAS could eventually impose a two-year ban.

Since the WADA Code could not be directly transposed into German law, the NADA – a foundation under private law – had to create the NADA Code in line with international requirements. Like the WADA Code, however, these rules under private law are not directly binding upon athletes in Germany. Therefore, the NADA Code needs to be implemented in the individual associations' statutes or licence and team contracts must be concluded with athletes.

To fulfil the requirements of the government grant approval, all sports associations have concluded a contract with NADA agreeing to implement the NADA Code. With the help of public pressure, NADA was able to convince those large sport associations in Germany which do not receive state funding to cooperate with NADA and introduce anti-doping rules in line with the NADA Code. In addition to possible obligations of a German association towards its international association,

necessary action has been taken at national level to oblige the association to comply with the rules of the WADA Code and the NADA Code.

There is no German law codifying all national anti-doping rules. However, the Pharmaceutical Products Act (*Arzneimittelgesetz*, AMG; Annex 6.1) includes provisions which are primarily intended for the athlete's entourage. Section 6a of this law stipulates:

Section 6a Prohibition of pharmaceutical products for doping purposes in sport

- (1) The placing on the market, prescribing or administering of pharmaceutical products to others for the purpose of doping in sport, is prohibited.
- (2) Sub-section 1 shall apply only to pharmaceutical products which contain substances belonging to the groups of prohibited active substances or substances contained in the Appendix to the Anti-Doping Convention (Act of 2 March 1994 on the Anti-Doping Convention of 16 November 1989, Federal Law Gazette 1994 II p. 334) which are intended for use in the prohibited measures listed therein in so far as human beings are or are intended to be the subjects of the doping. The package leaflet and the expert information of these pharmaceutical products shall contain the following warning: "The use of the pharmaceutical product [insert name of the pharmaceutical product] can lead to positive results in the event of a doping test." If the misuse of the pharmaceutical product for doping purposes can endanger health, this shall also be included. Sentence 2 shall not apply to pharmaceutical products which have been produced using a homeopathic manufacturing procedure.
- (2a) It is prohibited to possess pharmaceutical products which are or contain substances listed in the annex to the present Act in significant quantities for doping purposes in sport in so far as human beings are to be the subject of doping. The Federal Ministry of Health shall specify, in agreement with the Federal Ministry of the Interior, after hearing experts, by means of ordinance with the approval of the Bundesrat, what constitutes a significant quantity of the substances mentioned in sentence 1. The Federal Ministry of Health is hereby authorized, in agreement with the Federal Ministry of the Interior, after hearing experts
 1. to include in the annex to the present Act additional substances which can be used for doping purposes in sport, are used in considerable quantities for this purpose and the use of which without a therapeutic assessment is dangerous, and
 2. to specify what constitutes a significant quantity of such pharmaceutical products by ordinance with the consent of the Bundesrat.By ordinance pursuant to sentence 3, pharmaceutical products can be deleted from the annex to the present Act if the prerequisites contained in sentence 3 no. 1 no longer exist.
- (3) The Federal Ministry is hereby authorized to specify, in agreement with the Federal Ministry of the Interior, by ordinance subject to the approval of the Bundesrat, additional substances or preparations made from substances to which sub-section 1 applies, where this is deemed necessary in order to prevent pharmaceutical products from posing a direct or indirect hazard to human health through doping in sport.

Section 95 of the Act specifies the sanctions:

Section 95 Penal provisions

- (1) Any person who
1. contrary to Section 5 (1) markets pharmaceutical products or administers such pharmaceutical products to others,
 2. contravenes an ordinance issued in compliance with Section 6, which forbids the marketing of pharmaceutical products, in so far as it refers to the present penal provision for specific cases,
 - 2a. contrary to Section 6a (1), markets or prescribes pharmaceutical products for doping purposes in sport, or administers such pharmaceutical products to others,
 - 2b. contrary to Section 6a (2a) possesses significant quantities of pharmaceutical products for doping purposes in sport,
 3. markets radiomedical and pharmaceutical products in the manufacture of which ionizing radiation is used in breach of Section 7 (1),
 - 3a. contrary to Section 8 (1) No. 1 or 1a, also in conjunction with Section 73 (4) or Section 73a, manufactures or markets pharmaceutical products,
 4. contrary to Section 43 (1), second sentence, (2) or (3), first sentence, trades in or dispenses pharmaceutical products which may be dispensed to the consumer by prescription only,
 5. dispenses pharmaceutical products which may be dispensed to the consumer by prescription only, in breach of Section 47 (1), to persons or bodies other than those specified therein, or dispenses them in breach of Section 47 (1a) or obtains them in breach of Section 47 (2), first sentence,
 - 5a. in breach of Section 47a (1), dispenses one of the pharmaceutical products specified therein to any facility other than those specified therein or places such a pharmaceutical product on the market,
 6. in breach of Section 48 (1), first sentence, in conjunction with an ordinance pursuant to Section 48 (2) no. 1 or 2, dispenses pharmaceutical products intended for use in food-producing animals,
 7. in breach of Section 56 (1), dispenses medicated feed to animal keepers without the required prescription,
 8. in breach of Section 56a (1), first sentence, also in conjunction with the third or second sentence, prescribes, dispenses or administers pharmaceutical products that are intended for use on food-producing animals and may be dispensed to consumers by prescription only,
 9. in breach of Section 57 (1), acquires pharmaceutical products which may be dispensed to consumers by prescription only,
 10. in breach of Section 58 (1), first sentence, administers pharmaceutical products which may only be dispensed to consumers by prescription, to food-producing animals,
 11. in breach of Article 5 (2) of Regulation (EEC) No. 2377/90, administers a substance to one of the animals specified therein,

shall be liable to imprisonment for a term not exceeding three years or to a fine.

- (2) The attempt to commit such acts shall be punishable.
- (3) In particularly serious instances, the penalty shall be imprisonment for a term of one to ten years. As a rule, a particularly serious instance shall be said to exist if the perpetrator,

1. by means of one of the actions indicated in sub-section 1,
 - a) endangers the health of a large number of persons,
 - b) exposes another person to the risk of death or the risk of serious injury to that person's body or health, or
 - c) acquires a considerable pecuniary gain for himself/herself or another person out of gross self-interest, or
 2. in the cases of sub-section 1 no. 2a,
 - a) dispenses pharmaceutical products for doping purposes in sport to persons under the age of 18 years or administers such pharmaceutical products to these persons, or
 - b) acts commercially or as a member of a gang which has come together for the recurrent commission of such acts, or
 3. in the cases mentioned in sub-section 1 no. 3a, manufactures or markets counterfeit pharmaceutical products acting, in the process, commercially or as a member of a gang which has come together for the recurrent commission of such acts.
- (4) If the perpetrator has acted negligently in the instances cited in sub-section 1, the penalty shall be imprisonment for a period of not more than one year or a fine.

In 2007 stricter liability provisions were introduced by the Act on Improving Measures against Doping Sport. The Act (cf. Annex 6.2)

- introduces stricter penalties for doping crimes under the Pharmaceutical Products Act committed on a commercial or gang basis;
- introduces the extended forfeiture in these cases, e.g. confiscation of profits;
- extends Section 6a of the Pharmaceutical Products Act to include drugs used in conjunction with methods prohibited in the appendix to the Anti-Doping Convention and for the purpose of human doping;
- introduces the mandatory inclusion of warnings on packaging and specialist information for physicians concerning drugs which can be used for doping;
- authorizes the Federal Criminal Police Office (BKA) to conduct investigations of internationally organized trafficking in pharmaceutical products;
- introduces criminal penalties for the possession of significant quantities of certain doping substances which are especially dangerous.

In addition to these laws, doping (also by a third party) may be punishable under the Narcotics Act and the Criminal Code. In Germany, it is not punishable under (national) law to dope oneself unless this involves the possession of prohibited pharmaceutical products or narcotics. However, doping athletes may be held liable towards sponsors for fraud based on strict criteria.

Thus, Germany has no uniform anti-doping law but numerous anti-doping provisions in various laws which also provide for significant sanctions and investigation possibilities. There are different opinions and various discussions on whether these sanctions and sanctions under sport law are sufficient or whether stricter prohibitions are necessary under criminal law. For the time being, the tightened provisions of the Pharmaceutical Products Act and the introduction of criminal liability for the possession of doping substances in 2007 are an important step forward. It remains to be seen how effective it will be and how law enforcement agencies will apply it in practice. The Act on Improving Measures against Doping in Sport (*Gesetz zur Verbesserung der Bekämpfung des Dopings im Sport*) will be evaluated in 2012.

Of course, Germany closely cooperates with its partners also at international level. For example, the Federal Republic of Germany joined the Council of Europe Anti-Doping Convention on 2 March 1994. The Additional Protocol to the Convention took effect in Germany on 1 May 2008. In early 2007, Germany ratified the UNESCO International Convention against Doping in Sport, which became effective in Germany on 1 July 2007.

2.2. The structure of anti-doping work in Germany and cooperation among national anti-doping

The following section introduces the individual institutions acting as national anti-doping organizations in Germany and describes anti-doping cooperation.

2.2.1. German sport organizations

The umbrella organization of German sport is the German Olympic Sports Confederation (DOSB) formed in 2006 from the merger of the National Olympic Committee and the German Sports Federation. On the one hand, the DOSB unites 60 national associations of Olympic and non-Olympic disciplines. On the other hand, each of the 16 federal states (*Länder*) has its own umbrella organization, the *Land* sports associations (LSB), which cover all sports at *Land* level and are in particular committed to recreational sport and the promotion of young athletes. The LSBs also belong to the DOSB. As the umbrella organization of sport in Germany which covers both top-level and recreational sport, the DOSB has a key role in dealing with Olympic as well as grassroots issues. Therefore, the DOSB plays an important role also in the prevention of doping.

Given Germany's strongly federal system and the LSBs in the *Länder*, there is not only one single umbrella organization for all sports. Each national sports association also has its own *Land* association in each of the 16 federal states. Members of these *Land* associations include only the individual sport clubs, not the athletes themselves. Since in many sports athletes are not directly bound to national sports associations by licences for professional athletes or the like, individual contracts have to be concluded to ensure that athletes taking part in competitions are subject to the NADA Code. As a rule, national sports associations and their top athletes conclude anti-doping agreements through which the athletes agree to participate in doping controls and to respect the anti-doping rules. Depending on the sport, these agreements are concluded instead or in addition with the *Land* sports association, the team or the league.

Given the hierarchical structure (national sports association – *Land* association – club – athlete) which, as mentioned above, is based on the special autonomy of associations and clubs in Germany, it is a very complicated task to oblige all athletes to comply with the anti-doping rules so that effective sanctions can be imposed in case of violations. Therefore, when the rules are changed, as in the new WADA Code, significant efforts must be made in Germany until all national sports associations, *Land* associations and partly also the leagues have adapted their rules and agreements. Since many of these organizations depend on volunteers and do not employ their own lawyers who would make and examine the necessary amendments, they need assistance from the DOSB and the National Anti-Doping Agency (NADA).

2.2.2. The National Anti-Doping Agency (NADA)

NADA was founded in 2002 at the Federal Government's initiative as a foundation under private law. From 2003 it replaced the joint anti-doping commission of the German Sports Federation and the National Olympic Committee which had coordinated anti-doping measures in the previous decade. NADA was organized as a foundation to create an institution which is tied neither to organized sport nor to the state. The Federal Government, the *Länder*, the city of Bonn (NADA headquarters), sport and the private industry all contributed to NADA's initial capital, which is intended to allow NADA to act independently. These stakeholders are also represented on the NADA board of trustees, a supervisory body which has no influence on NADA's practical doping control work but monitors the use of the foundation's capital as well as basic decisions of NADA. Another NADA body is the foundation board composed of five volunteer experts from different fields and the managing director. The board decides on NADA's major anti-doping measures.

When NADA was created, it had only a managing director and five further full-time staff who planned doping controls which were conducted by an external company. Today, NADA employs 18 full-time staff and four part-time staff. Also the number of annual doping controls has been increased from about 4,500 to 8,000 out-of-competition tests. In addition to out-of-competition tests, which are the focus of NADA controls, the agency increasingly takes over in-competition tests from sports associations and professional leagues depending on its capacities. In Germany, more than 12,000 doping controls (in and out of competition) are conducted annually.

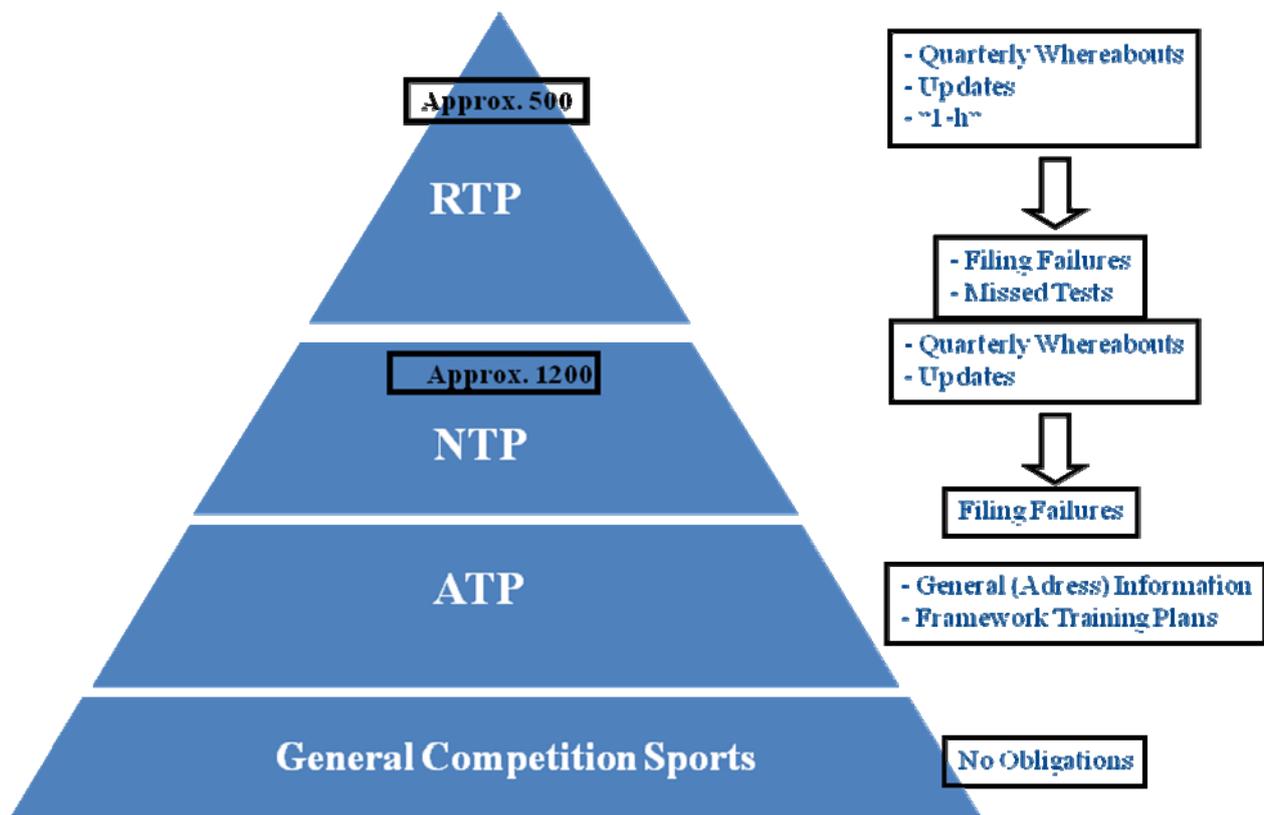
NADA concludes contracts on doping controls with German sports organizations. Such contracts exist with national sports associations, organizers, several professional leagues and the *Land* sports associations. These organizations task NADA to independently plan and conduct doping controls for their athletes and are responsible for the sanction proceedings against athletes in case of a violation unless this is directly referred to the German Court of Arbitration for Sport (German Institution of Arbitration, DIS). NADA, WADA and other organizations pursuant to Art. 13 of the WADA Code have the right to appeal against final decisions. Pursuant to the national provisions of the NADA Code an appeal must be filed with a court of arbitration within the meaning of Book 10 of the Code of Civil Procedure (*Zivilprozessordnung*, ZPO). In addition, NADA has the right to initiate proceedings if the association fails to act.

NADA does not impose sanctions for violations of anti-doping provisions but gives advice and monitors the proceedings and sanctions imposed by associations. However, it does monitor compliance with reporting obligations. Athletes in the testing pool must provide NADA, which also determines whereabouts failures and missed tests, with their whereabouts information via ADAMS. While the DOSB conducts the administrative review procedure against relevant decisions so that NADA can control the sport and sport can control NADA, sanctions against violations of the anti-doping provisions, i.e. three filing failures or missed tests, are imposed by the association.

As early as 2007 NADA introduced specific reporting obligations for several thousands of athletes in Germany to improve the doping control system. In 2008 "intelligent tests" and "national testing

pools” were added to the doping control system. They provide for a different test frequency and different reporting obligations depending on the risk of doping in individual sports. The number of annual out-of-competition tests in Germany has increased from 4,500 to 8,000. Thus, Germany is an international leader in terms of out-of-competition tests conducted.

The following figure illustrates the German doping control system with its three testing pools:



(NADA chart on the division of testing pools, “testing pool pyramid”)

In addition to the top testing pool for which the one-hour rule must apply, the WADA Code allows further testing pools with fewer reporting obligations. Therefore, NADA has assigned all “one-hour athletes” to the RTP (Registered Testing Pool, in line with the international designation for the IRTP – International Registered Testing Pool – of international associations). The RTP includes IRTP athletes selected by international associations and those German athletes with the highest risk level (risk level I). In addition, it includes “red-flag athletes” who gave reason for special observation. The RTP currently includes some 500 athletes.

Below the RTP there is a national testing pool (NTP). It includes athletes of risk levels II and III which do not belong to an international testing pool. There are some 1200 athletes in this testing pool. They are subject to the same reporting obligations as RTP athletes except that they do not have to provide “one-hour information” for each day.

The lowest testing pool is the general testing pool (ATP) which includes other German athletes in national teams. They do not need to provide detailed whereabouts information via ADAMS but should inform NADA about their usual place of residence and their framework training schedule.

Within this doping control system some 9,000 German athletes in three testing pools must comply with different reporting obligations.

2.2.3. The state (the Federal Ministry of the Interior as the ministry responsible for top-level sport)

The promotion of top-level sport is incumbent on the Federal Ministry of the Interior. A directorate-general with seven divisions covers the various aspects of sport. Since 2008 there has also been a specialized division for the national and international fight against doping; tolerance and fair play (Division SP7). Given the autonomy of sport, the state’s leverage over sports associations, also as regards anti-doping policies, is restricted to obligations in grant approvals and possible claims for returning funds. In addition to examining whether the funded sports associations fulfil their anti-doping obligations, Division SP7 is responsible for international cooperation in the fight against doping. Moreover, the ministry funds NADA prevention projects and the two German WADA-accredited laboratories, analyses the effectiveness of sanctions against doping under criminal law and prepares relevant legislation.

3. Compliance with the articles of the Convention

3.1. 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 Federal Republic of Germany ratified the Convention in 1994 and the Additional Protocol in 2007. The willingness to take forward international anti-doping policies has also been demonstrated by ratifying the UNESCO Convention against Doping in Sport in early 2007.

The aim of the Convention has been implemented by Germany through various measures. They include in particular:

- Funding the joint anti-doping commission of the German Sports Federation and National Olympic Committee in 2002.
- Initiating the foundation of NADA in 2002 and providing the major part of the initial NADA capital (starting with 5.1 million euros of the overall capital of 8.67 million euros; increase to 9.1 million euros in 2009 with a total capital of 10.8 million euros).
- Supporting national anti-doping policies with dedicated annual subsidies for national sports associations and NADA.
- Providing the two WADA-accredited laboratories in Cologne and Kreischa with annual funding of 2 million euros for analyses/research.
- Long-term funding for doping prevention measures, currently 300,000 euros per year.
- Making doping with pharmaceuticals punishable in 1998, extending the scope of liability and introducing a restricted liability for the possession of doping substances in 2007.
- Actively participating in various national, European and other international anti-doping working groups and bodies.
- Pursuing thorough discussions with WADA in the framework of revising the WADA Code and the international standards.

The increasing significance of anti-doping policies in Germany is also illustrated by the government funds provided since 1997 for this purpose. The following table includes the relevant figures excluding the funding of national sports associations which is tied to specific anti-doping measures by the associations. Federal Government funding covers the following areas:

- Anti-doping research,
- Doping analyses,
- Doping prevention (since 2005),

- the National Anti-Doping Agency – NADA (2002, 2006, 2008 – 2010) and
- the World Anti-Doping Agency – WADA (since 2002).

Year	Federal Government funding for anti-doping policies
1997	0.8 million euros
1998	1.3 million euros
1999	1.3 million euros
2000	1.6 million euros
2001	1.8 million euros
2002	6.9 million euros
2003	1.7 million euros
2004	1.8 million euros
2005	2.3 million euros
2006	4.2 million euros
2007	1.8 million euros
2008	4.7 million euros
2009	5.1 million euros
2010	5.2 million euros

This list does not include additional government spending by the *Länder*.

3.2. 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.**

The WADA Prohibited List is of course also recognized in Germany. It is implemented by the NADA Code which is the basis for the associations' rules so that it is binding upon the athletes. In addition, the annually updated Prohibited List is published in the Federal Law Gazette as an

Appendix to the Convention. Although doping oneself is prohibited only under sport law and not under criminal law, the prohibition of doping by a third party, which is punishable under criminal law, is based on the substances of the published Prohibited List. Pursuant to Section 6a (1) of the Pharmaceutical Products Act “the placing on the market, prescribing or administering of pharmaceutical products to others for the purpose of doping in sport, is prohibited” (in addition, according to sub-section 2a it is punishable to possess certain amounts of doping substances).

Thus, Germany has implemented the List of Prohibited Substances in terms of both sport and criminal law.

3.3. 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.**

As mentioned above, a division for anti-doping and fair play has been established within the directorate-general for sport at the Federal Ministry of the Interior. This division is also responsible for intensifying cooperation with other state agencies such as other ministries and law enforcement authorities and to coordinate their work. In addition, the division participates in government and mixed working groups to present the Federal Government position and contribute to a coordinated and effective approach to anti-doping measures. This cooperation aims at both prosecuting and preventing doping violations. For example, a National Plan on Doping Prevention has been drafted together with the Länder, the DOSB and NADA. It will be discussed in more detail in the section on Article 6 (Education).

The Federal Government can exert direct influence on the sports associations’ anti-doping activities – as stated above – only through obligations in grant approvals. Therefore, another important task of the directorate-general for sport is to examine whether the funded associations have fulfilled all obligations in their anti-doping activities.

Since 2007 cooperation between German anti-doping organizations has once more significantly improved. At that time, the Federal Ministry of the Interior, the DOSB and NADA decided to develop an anti-doping report. Each year some 60 state-funded sports associations are required to answer this questionnaire on various anti-doping aspects. NADA and the Federal Office of Administration examine and analyse these answers. If they reveal misconduct or shortcomings, anti-doping organizations cooperate to encourage the association to remedy the deficit. Should this not be successful, the Federal Ministry of the Interior initiates the relevant steps in terms of subsidy law. This cooperation has improved not only communication but also awareness of the anti-doping work of numerous associations in Germany.

In practice, the Convention principles are applied by NADA. This independent foundation under private law coordinates its activities with other private and public anti-doping bodies to ensure that joint action creates synergies and that state obligations from international conventions are adhered to.

3.4. 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.**
- 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.**
- 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.**
- 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.**

3.4.1 Legal measures

As described under 2.1, in Germany the availability and use of doping substances is restricted by several laws. This is based on the traditional distinction between pharmaceutical products and narcotics. In addition to these criminal provisions there are further legal and procedural provisions concerning the trade in doping substances and the prosecution of such activities. These laws include in particular the Act on the Customs Investigation Service and the Federal Criminal Police Act which grants the authority extensive powers in prosecuting international misuse of pharmaceutical products, as well as the amended Criminal Code of 1 September 2009 which introduces the state's evidence provision in Section 46b.

When the Act on Improving Measures against Doping in Sport (Annex 6.2) entered into force in 2007, several of these laws were amended in concert to make anti-doping policies more effective. The Act strengthened the state's powers to investigate cases of trade in doping substances which

was assigned the same status as the organized trade in narcotics. In addition, a limited liability for the possession of pharmaceutical products has been introduced. According to the new Section 6a (2a) of the Pharmaceutical Products Act it is prohibited to possess pharmaceutical products which are or contain substances listed in the annex to the present Act in significant quantities for doping purposes in sport in so far as human beings are to be the subject of doping. The annex provides thresholds for individual substances which were defined together with anti-doping researchers and law enforcement authorities. The Regulation determining the significant quantity of doping substances (*Dopingmittel-Mengen-Verordnung*, DmMV) of 22 November 2007 is included in Annex 6.3. An amendment initiated by the Federal Government further reduces some thresholds for doping substances. The legislative procedure for the draft regulation is still ongoing.

3.4.2. Anti-doping work as a prerequisite for funding

Given the special autonomy of sports associations in Germany and the separation of sport and state, the Federal Government cannot impose fines on associations for not actively pursuing anti-doping measures. However, almost all large sports associations in Germany depend on state funding. The grant approvals include anti-doping clauses which oblige associations to take anti-doping measures and implement the NADA Code.

If an association does not fulfil its obligation or does not suspend or impose sanctions in line with the NADA Code, it is given a warning or required to reimburse funds. If NADA establishes a deviation from the NADA Code when reviewing the associations' anti-doping rules, for example, or that athletes were not effectively obliged to follow the rules, NADA notifies the agency which provides funding (Federal Office of Administration) and the directorate-general for sport at the Federal Ministry of the Interior. It will then initiate a review and take further steps as needed against the association in consultation with the Federal Ministry of the Interior. This mechanism has proven highly effective to ensure compliance with the WADA rules and the Convention.

3.4.3. State funding for anti-doping

In Germany, the principle of subsidiarity of state funding applies, which means that associations should pay for doping controls themselves. Only "clean" sport should receive state funding. Therefore, associations do not receive state funding for doping controls.

However, the government provides funding for NADA and thus indirectly for doping controls. State funding for NADA has been considerably increased in 2008. Until 2011 the doping control system will be supported with one million euros annually, and another annual one million euros will be contributed to the foundation's capital.

NADA conducts out-of-competition tests, and the associations are responsible for most in-competition tests. In the future, it is intended that NADA gradually also assumes responsibility for in-competition tests. The aim is to achieve extensive and impartial controls in the fight against doping.

Associations receiving state funding do not bear the entire costs for NADA out-of-competition tests but only a certain part. The remaining costs are covered by the state funding for the NADA doping control system. Associations which bear their own costs also pay for out-of-competition tests themselves.

The analysis of doping tests is conducted by the two WADA-accredited anti-doping laboratories in Germany (cf. section 3.5).

Doping controls at large-scale sporting events such as the 2009 World Championships in Athletics are not funded by the state if the event is commercial. The organizers of these events can pay for the necessary doping controls themselves by charging admission, for example, so that state funding is not required. This is how the aforementioned subsidiarity principle of state funding works.

3.5. 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.**

There are two WADA-accredited anti-doping laboratories in Germany: the Institute of Biochemistry at the German Sport University Cologne and the Institute of Doping Analysis and Sports Biochemistry Dresden.

The Federal Government provides substantial support for the laboratories' research and analysis activities and promotes a bilateral research exchange between laboratories in Germany and France (e.g. between the laboratories in Cologne and Paris).

Until 2007 the laboratories received some 800,000 euros of annual funding. In 2008 funding was increased to 1.6 million euros and in 2009 to 2 million euros. These funds are provided for doping research, in particular for research into new analysis methods.

The analysis of NADA out-of-competition tests is fully state funded. Only those associations able to finance themselves do not require state support. A certain amount of state funding is provided for in-competition tests.

Both laboratories have excellent reputations at international level, not least for their anti-doping research.

The German Sport University (DSHS) in Cologne follows a unique approach to sport scientific and scientific research and is among the world's leading institutes for doping research. The DSHS Cologne has a unique structure and organization. The Institute of Biochemistry was the first institution worldwide to establish anti-doping research and has been among the leading research laboratories for over 25 years. Together with institutes of sport medicine and sport science the DSHS provides an excellent infrastructure for implementing current and future research goals. Another research focus was established by creating the Centre for Preventive Doping Research and a corresponding chair (Professor Thevis), which helped take the lead in third-party funding and project funding by the World Anti-Doping Agency (WADA).

In March 2009 a working group led by Professors Mario Thevis and Wilhelm Schänzer at the Centre for Preventive Doping Research at the German Sport University Cologne for the first time traced a substance for gene doping (GW1516) using mass spectrometry. The test was developed with financial support from the Federal Ministry of the Interior. GW1516 is a PPAR delta agonist which has been on the WADA gene doping list only since 2009. This substance, for which clinical tests have reached an advanced stage, may be misused for enhancing performance in sport.

Since regaining its accreditation, the Institute of Doping Analysis and Sports Biochemistry (IDAS) in Dresden/Kreischa has steadily increased the number of samples taken so that currently over four times more doping controls are conducted than in the beginning. It introduced and further developed new procedures such as methods for tracing growth hormones and new types of erythropoietin.

The number of new potential doping substances and methods also continues to increase so that new test methods and materials (blood) require test methodology to be continuously adapted. The analysis procedures used by IDAS are in line with all current WADA standards for doping analysis and provide a basis for further cooperation, e.g. on legal issues (offences and death after the misuse of anabolic substances, examination of seized doping substances).

The growing significance of creating athlete records (blood or athlete passports) including doping parameters (e.g. steroid profiles) helps improve the individual assessment of these parameters but also entails logistical efforts to ensure swift communication and assessment of analysis data and intelligent target testing. In this respect, closer cooperation with the national anti-doping agency and international associations has been useful.

3.6. 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.**
- 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.**

In addition to testing and sanctions, prevention has become an important pillar of Germany's anti-doping policy. In particular in the field of young national athletes state-funded projects seek to raise awareness of the moral and health implications of doping.

The Federal Ministry of the Interior annually contributes 300,000 euros to a diversified NADA prevention programme to thoroughly inform athletes and their entourages about the dangers of doping and strengthen anti-doping attitudes. To this end, also modern media such as USB sticks are used. Prevention efforts are also intended to focus increasingly on multipliers (coaches, trainers, teachers, physicians etc.) and parents, not least given findings of a state-funded study on the status of doping prevention in Germany.

Youths are also in the focus of attention. For example, since 2005 the Federal Ministry of the Interior has been funding NADA prevention work for youths, entitled "High Five". This work includes a brochure (3rd edition published in 2009), a website (www.highfive.de) and a NADA information stand. The "High Five" material provides age-appropriate information on rules, the medical background and the consequences of doping. Moreover, it includes examples and a knowledge test, both on the Internet and on the computers, at the information stand and in the brochure.

Other state-funded NADA measures include the NADA tour through elite sport schools and the NADA information stand at "Youth Trains for the Olympics". During its tour, NADA visits all elite sport schools in Germany attended by most young athletes to establish contacts with them. It also visits the final event of the federal competition "Youth Trains for the Olympics". NADA informs young athletes in brief presentations and provides important information on rules, on the medical background, on how to prevent "doping traps" and on health and social consequences of cheating. NADA is supported by successful top athletes who talk about their own experiences and together with NADA staff discuss with young athletes.

National Plan on Doping Prevention

The Federal Ministry of the Interior and the Conference of Sport Ministers of the *Länder* together with the German Olympic Sports Confederation (DOSB) and NADA developed a National Plan on Doping Prevention which was adopted by the four partners in July 2009. The National Plan on Doping Prevention aims at organizing sustainable doping prevention measures in close cooperation across Germany and thus to make the best use of limited resources. Implementing specific prevention measures in practice requires financial support by the Federal Government and the *Länder*.

The National Plan on Doping Prevention covers not only prevention measures for top-level sport but also for recreational sport to address the issue at all levels of sport. It is also intended to expand the Plan to include younger athletes to support a strict anti-doping attitude already at the beginning of an athlete's career. Successful prevention activities tailored to the various target groups, covering the involvement of multipliers, simple communication channels and strengthened services for certain target groups, are part of good prevention work.

The National Plan on Doping Prevention aims at broadly activating sport structures across Germany for doping prevention. In future, activities are to be carried out within a larger operating range and more systematically. In a network of prevention partners, projects will be coordinated and quality assurance will be performed. In this context, NADA will have a uniting function. The individual projects will be carried out under the auspices of individual partners. They will be coordinated at a "Round Table on Doping Prevention" which will meet regularly starting in autumn 2009.

3.7. 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.**

By providing funds only under certain conditions, the Federal Government has been able to ensure that German sports associations included the requirements of the NADA Code, the German implementation of the WADA Code, in their rules which thus become binding upon their athletes. This helped NADA and the DOSB create a uniform German doping control system. NADA was also able to convince leagues to join the uniform system and thus follow the rules of WADA and NADA. All of these organizations apply the WADC/NADC and all international standards of WADA (in their German implementation).

The NADA doping control system has already been described in 2.2.2; please refer to the relevant statements above.

Through the NADA Code and grant approvals, all German sport associations are obliged to provide for a maximum of one sanction level within the association's jurisdiction for all national doping sanction proceedings. Irrespective of the right to appeal at CAS, the second instance at the latest must be a true court of arbitration which must be in line with the very high standards of German jurisprudence so that it is not necessary to involve state courts. This meets the Convention's call for independent and impartial sanction proceedings.

The Act on Improving Measures against Doping in Sport (2007) introduced a list of prohibited doping substances in the Pharmaceutical Products Act (as an appendix to Section 6a of the Act; cf. Annex 6.2). The list includes all frequently used doping substances which pose a health risk. The list is also stored on the USB stick which has been distributed to all athletes in the NTP and RTP. The USB stick was developed by NADA in summer 2009 with state funding and includes the most important information on doping for athletes.

As described above, NADA conducts out-of-competition and some in-competition tests. From 2003 to 2007 it carried out some 4,500 out-of-competition tests per year. In 2008 the number of controls increased to about 8,000. Out-of-competition tests are conducted without prior notice. The samples are analysed by the two German WADA-accredited laboratories in Cologne and Kreischa. In addition to the 8,000 NADA controls, national sports associations conduct further controls (in particular in-competition tests) since grant approvals oblige them to take anti-doping measures.

Furthermore, doping controls are conducted abroad. In this context, please refer to the following section on international cooperation, in particular cooperation among European NADOs and the close cooperation of NADOs from Germany, France, Austria and Switzerland.

3.8. 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.**

Both the German NADA and the German state work together with international partners to fight doping.

The Council of Europe Anti-Doping Convention was created in 1989, i.e. before the founding of WADA (1999) and the adoption of the UNESCO Convention (2005). It is therefore the first transnational legal instrument to fight doping. The Convention covered the recognition of control programmes, stricter doping tests and improved control procedures. The Monitoring Group (T-DO) was established to implement the Convention; both the Federal Ministry of the Interior and the German NADA participate in the group.

With the founding of WADA in 1999 European countries gradually realized that Europe should exert greater influence on WADA and improve cooperation. To coordinate the European views, an ad-hoc committee called European Coordination Forum on the World Anti-Doping Agency (CAHAMA) was established at the CoE. The Committee played a decisive role in revising the 2009

WADA Code and preparing the World Anti-Doping Conference (Madrid) and is currently dealing with the European proposals on revising the WADA statutes. The Federal Ministry of the Interior is also represented in this Committee. In 2005 UNESCO adopted the International Convention against Doping in Sport which entered into force in Germany in 2007. The Federal Ministry of the Interior participates in the biennial conference of state parties to monitor the implementation of the Convention.

Germany also supports and funds international cooperation between different NADOs. During Germany's EU Presidency in the first half of 2007, a network of European NADOs was established at Germany's initiative in June 2007. Several NADO meetings have already taken place in the framework of this network.

Since the new World Anti-Doping Code entered into force on 1 January 2009 many of the new provisions have entailed greater organizational and administrative efforts by national anti-doping organizations, in particular as regards planning and conducting controls as well as information and prevention. In March 2009 the anti-doping organizations of Germany, France, Austria and Switzerland agreed on close cooperation against doping. At the quadrilateral meeting in Ittigen, Switzerland, they concluded a written agreement on a strong partnership in addressing prevention, legal issues, doping controls and research. In the field of information and prevention, for example, they agreed to exchange and jointly develop teaching materials. New e-learning products are already being developed this year.

Supplement: German members in WADA bodies:

Claudia Bokel Athlete Commission

Wilhelm Schänzer Laboratory Working Committee

4. Additional Protocol to the Anti-Doping-Convention (Warsaw, 12 September 2002)

Article 1: Mutual Recognition of doping controls

1.1 Bearing in mind the provisions of Articles 3.2, 4.3.d and 7.3.b of the Convention, the Parties shall mutually recognise the competence of sports or national anti-doping organisations to conduct doping controls on their territory, in compliance with the national regulations of the host country, on sportsmen and women coming from other Parties to the Convention. The result of such controls shall be communicated simultaneously to the national anti-doping organisation and national sports federation of the sportsman or sportswoman concerned, to the national anti-doping organisation of the host country, and to the international sports federation.

1.2 The Parties shall take such measures as are necessary for the conduct of such controls, which may be in addition to those carried out by virtue of a previous bilateral or other specific agreement. In order to ensure compliance with internationally recognised standards, the sports or national anti-doping organisations shall be certified to the ISO quality standards for doping control recognised by the Monitoring Group, set up by virtue of Article 10 of the Convention.

1.3. The Parties shall similarly recognise the competence of the World Anti-Doping Agency (WADA) and of other doping control organisations operating under its authority to conduct out-of-competition controls on their sportsmen and women, whether on their territory or elsewhere. The results of these tests shall be communicated to the national anti-doping organisation of the sportsmen and women concerned. Any such controls shall be carried out, in agreement with the sports organisations referred to in Article 4.3.c of the Convention, in accordance with regulations in force and with the provisions of national law of the host country.

The Federal Republic of Germany signed the Additional Protocol to the Anti-Doping Convention on 15 February 2006; it entered into force without amendments on 1 May 2008. The Federal Republic of Germany fully meets the requirements of the Additional Protocol, in particular by submitting the necessary data via NADA.

NADA took the measures necessary for carrying out doping controls. A significant number of tests are being carried out. The samples are analysed by two WADA-accredited laboratories (Cologne and Kreischa; cf. section 3.5). These laboratories fulfil the ISO quality standards for doping controls.

In Germany, NADA is responsible for out-of-competition tests. NADA submits the test results to WADA. Nevertheless WADA, the International Olympic Committee (International Paralympic Committee) and the international umbrella association of the individual athlete are entitled to organize and carry out out-of-competition tests. Upon request, NADA conducts doping controls also for other NADOs and at international championships and competitions. In Germany, foreign NADOs are not prohibited from conducting doping controls as long as they abide by national health provisions, etc.

5. Contacts

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Nationale Anti-Doping Agentur (NADA)
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53113 Bonn

Deutscher Olympischer Sportbund (DOSB)
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60528 Frankfurt/M.

Deutsche Sporthochschule Köln
Institut für Biochemie
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Institut für Dopinganalytik und Sportbiochemie Dresden
Dresdner Str. 12
01731 Kreischa

6. Annexes

6.1. Extract from the Pharmaceutical Products Act (Sects 6a, 95)

**PHARMACEUTICAL PRODUCTS ACT
(THE DRUG LAW)
(ARZNEIMITTELGESETZ – AMG)
of the
FEDERAL REPUBLIC OF GERMANY**

- Extract -

Non-official translation

Section 6a

Prohibition of medicinal products for doping purposes in sport

(1) The placing on the market, prescribing or administering of medicinal products to others for the purpose of doping in sport, is prohibited.

(2) Sub-section 1 shall apply only to medicinal products which contain substances belonging to the groups of prohibited active substances or substances contained in the Appendix to the Anti-Doping Convention (Act of 2nd March 1994 on the Anti-Doping Convention of 16th November 1989, Federal Law Gazette 1994 II p. 334) which are intended for use in the prohibited measures listed therein in so far as human beings are or are intended to be the subjects of the doping. The package leaflet and the expert information of these medicinal products shall contain the following warning: "The use of the medicinal product [insert name of the medicinal product] can lead to positive results in the event of a doping test." If the misuse of the medicinal product for doping purposes can endanger health, this shall also be included. Sentence 2 shall not apply to medicinal products which have been manufactured using a homeopathic manufacturing procedure.

(2a) It is prohibited to be in possession of medicinal products which are or contain substances listed in the annex to the present Act in non-small quantities for the purpose of doping in sports in so far as human beings are to be the subject of doping. The Federal Ministry of Health shall specify, in agreement with the Federal Ministry of the Interior, after hearing experts, by means of ordinance with the approval of the *Bundesrat*, what constitutes the non-small quantity of the substances mentioned in sentence 1. The Federal Ministry of Health is hereby empowered, in agreement with the Federal Ministry of the Interior, after hearing experts:

1. to include in the annex to the present Act additional substances which can be used for doping purposes in sport, are used in considerable quantities for this purpose and the use of which without a therapeutic assessment is dangerous, and

2. to specify what constitutes a non-small quantity of such medicinal products by ordinance with the consent of the *Bundesrat*.

By ordinance pursuant to sentence 3, medicinal products can be deleted from the annex to the present Act if the prerequisites contained in sentence 3 no. 1 no longer exist.

(3) The Federal Ministry is hereby empowered to specify, in agreement with the Federal Ministry of the Interior, by ordinance subject to the approval of the *Bundesrat*, additional substances or preparations made from substances to which sub-section 1 shall apply, in so far as this is deemed necessary in order to prevent medicinal products from posing a direct or indirect hazard to human health through doping in sport.

Section 95

Penal provisions

(1) Any person who

1. contrary to Section 5, also in conjunction with Section 73a, markets medicinal products for which there is reasonable suspicion that it can cause harmful effects,

2. contravenes an ordinance issued in compliance with Section 6, which forbids the marketing of medicinal products, in so far as it refers to the present penal provision for specific cases,

2a. contrary to Section 6a sub-section 1, markets or prescribes medicinal products for doping purposes in the field of sport, or administers such medicinal products to others,

2b. contrary to Section 6a sub-section 2a, is in possession of non-small quantities of medicinal products for doping purposes in the field of sport,

3. markets radiopharmaceuticals and medicinal products in the manufacture of which ionizing radiation is used in breach of Section 7 sub-section 1,

3a. contrary to Section 8 sub-section 1 no. 1 or 1a, also in conjunction with Section 73 subsection 4 or Section 73a, manufactures or markets medicinal products,

4. contrary to Section 43 sub-section 1 sentence 2, sub-section 2 or 3 sentence 1, trades in or dispenses medicinal products which may be dispensed to the consumer on prescription only,

5. dispenses medicinal products which may be dispensed to the consumer on prescription only, in breach of Section 47 sub-section 1, to persons or bodies other than those specified therein, or dispenses them in breach of Section 47 sub-section 1a or obtains them in breach of Section 47 sub-section 2 sentence 1,

5a. in breach of Section 47a sub-section 1, dispenses one of the medicinal products specified therein to any facility other than those specified therein or places such a medicinal product on the market,

6. in breach of Section 48 sub-section 1 sentence 1 in conjunction with an ordinance pursuant to Section 48 sub-section 2 no. 1 or 2, dispenses medicinal products intended for use in foodproducing animals,

7. in breach of Section 56 sub-section 1, dispenses medicated feedingstuffs to animal keepers without the required prescription,

8. in breach of Section 56a sub-section 1 sentence 1, also in conjunction with sentence 3, or sentence 2, prescribes, dispenses or administers medicinal products that are intended for use on food-producing animals and may be dispensed to consumers on prescription only, or

9. in breach of Section 57 sub-section 1, acquires medicinal products which may be dispensed to consumers on prescription only,

10. in breach of Section 58 sub-section 1 sentence 1, administers medicinal products which may only be dispensed to consumers on prescription, to food-producing animals, or

11. in breach of Article 5 paragraph 2 of Regulation (EEC) No. 2377/90, administers a substance to one of the animals specified therein, shall be liable to imprisonment for a term not exceeding three years or to a fine.

(2) The attempt to commit such acts shall be punishable.

(3) In particularly serious instances, the penalty shall be imprisonment from one to ten years. As a rule, a particularly serious instance shall be said to exist if the perpetrator

1. by means of one of the actions indicated in sub-section 1:

- a) endangers the health of a large number of persons,
- b) exposes another person to the risk of death or the risk of serious injury to that person's body or health,
- c) acquires a considerable pecuniary gain for himself/herself or another person out of gross self-interest, or

2. in the cases referred to in sub-section 1 no. 2a,

- a) dispenses medicinal products for doping purposes in the field of sport to persons under the age of 18 years or administers such medicinal products to these persons, or
- b) acts commercially or as a member of a gang which has come together for the recurrent commission of such acts, or

3. in the cases mentioned in sub-section 1 no. 3a, manufactures or markets counterfeit medicinal products acting, in the process, commercially or as a member of a gang which has come together for the recurrent commission of such acts.

(4) If the perpetrator has acted negligently in the instances cited in sub-section 1, the penalty shall be imprisonment for a period of not more than one year or a fine.

6.2. Act on Improving Measures against Doping in Sport (German only)

2510 Bundesgesetzblatt Jahrgang 2007 Teil I Nr. 64, ausgegeben zu Bonn am 31. Oktober 2007

**Gesetz
zur Verbesserung der Bekämpfung des Dopings im Sport¹⁾**

Vom 24. Oktober 2007

Der Bundestag hat das folgende Gesetz beschlossen:

Artikel 1

Änderung des Bundeskriminalamtgesetzes

Das Bundeskriminalamtgesetz vom 7. Juli 1997 (BGBl. I S. 1650), zuletzt geändert durch Artikel 4 des Gesetzes vom 22. Dezember 2006 (BGBl. I S. 3409), wird wie folgt geändert:

In § 4 Abs. 1 Satz 1 Nr. 1 werden das Wort „oder“ durch ein Komma ersetzt und nach dem Wort „Betäubungsmitteln“ die Wörter „oder Arzneimitteln“ eingefügt.

Artikel 2

Änderung des Arzneimittelgesetzes

Das Arzneimittelgesetz in der Fassung der Bekanntmachung vom 12. Dezember 2005 (BGBl. I S. 3394), zuletzt geändert durch Artikel 2 des Gesetzes vom 20. Juli 2007 (BGBl. I S. 1574), wird wie folgt geändert:

1. Die Inhaltsübersicht wird wie folgt geändert:

a) Nach der Angabe zu § 98 wird folgende Angabe eingefügt:

„§ 98a Erweiterter Verfall“.

b) Folgende Angabe wird angefügt:

„Fünftehnter Unterabschnitt

§ 143 Übergangsvorschriften aus Anlass des Gesetzes zur Verbesserung der Bekämpfung des Dopings im Sport

Anhang“.

2. In § 4a wird nach Satz 2 folgender Satz eingefügt:

„Satz 1 Nr. 3 gilt nicht für Arzneimittel, die zu Dopingzwecken im Sport hergestellt worden sind.“

3. § 6a wird wie folgt geändert:

a) Absatz 2 wird wie folgt gefasst:

„(2) Absatz 1 findet nur Anwendung auf Arzneimittel, die Stoffe der im Anhang des Übereinkommens gegen Doping (Gesetz vom 2. März 1994 zu dem Übereinkommen vom 16. November 1989 gegen Doping, BGBl. 1994 II S. 334) aufgeführten Gruppen von verbotenen Wirkstoffen oder Stoffe enthalten, die zur Verwendung bei den dort aufgeführten verbotenen Methoden bestimmt sind, sofern das Doping bei Menschen erfolgt

oder erfolgen soll. In der Packungsbeilage und in der Fachinformation dieser Arzneimittel ist folgender Warnhinweis anzugeben: „Die Anwendung des Arzneimittels [Bezeichnung des Arzneimittels einsetzen] kann bei Dopingkontrollen zu positiven Ergebnissen führen.“ Kann aus dem Fehlgebrauch des Arzneimittels zu Dopingzwecken eine Gesundheitsgefährdung folgen, ist dies zusätzlich anzugeben. Satz 2 findet keine Anwendung auf Arzneimittel, die nach einer homöopathischen Verfahrenstechnik hergestellt worden sind.“

b) Nach Absatz 2 wird folgender Absatz 2a eingefügt:

„(2a) Es ist verboten, Arzneimittel, die im Anhang zu diesem Gesetz genannte Stoffe sind oder enthalten, in nicht geringer Menge zu Dopingzwecken im Sport zu besitzen, sofern das Doping bei Menschen erfolgen soll. Das Bundesministerium bestimmt im Einvernehmen mit dem Bundesministerium des Innern nach Anhörung von Sachverständigen durch Rechtsverordnung mit Zustimmung des Bundesrates die nicht geringe Menge der in Satz 1 genannten Stoffe. Das Bundesministerium wird ermächtigt, im Einvernehmen mit dem Bundesministerium des Innern nach Anhörung von Sachverständigen durch Rechtsverordnung mit Zustimmung des Bundesrates

1. weitere Stoffe in den Anhang dieses Gesetzes aufzunehmen, die zu Dopingzwecken im Sport geeignet sind, hierfür in erheblichem Umfang angewendet werden und deren Anwendung bei nicht therapeutischer Bestimmung gefährlich ist, und

2. die nicht geringe Menge dieser Stoffe zu bestimmen.

Durch Rechtsverordnung nach Satz 3 können Arzneimittel aus dem Anhang dieses Gesetzes gestrichen werden, wenn die Voraussetzungen des Satzes 3 Nr. 1 nicht mehr vorliegen.“

4. § 95 wird wie folgt geändert:

a) In Absatz 1 wird nach Nummer 2a folgende Nummer 2b eingefügt:

„2b. entgegen § 6a Abs. 2a Arzneimittel in nicht geringer Menge zu Dopingzwecken im Sport besitzt,“.

b) Absatz 3 wird wie folgt gefasst:

„(3) In besonders schweren Fällen ist die Strafe Freiheitsstrafe von einem Jahr bis zu zehn Jahren. Ein besonders schwerer Fall liegt in der Regel vor, wenn der Täter

¹⁾ Die Verpflichtungen aus der Richtlinie 98/34/EG des Europäischen Parlaments und des Rates vom 22. Juni 1998 über ein Informationsverfahren auf dem Gebiet der Normen und technischen Vorschriften und der Vorschriften für die Dienste der Informationsgesellschaft (ABl. EG Nr. L 204 S. 37), geändert durch die Richtlinie 98/48/EG des Europäischen Parlaments und des Rates vom 20. Juli 1998 (ABl. EG Nr. L 217 S. 16), sind beibehalten worden.

6.3. Regulation determining the significant quantity of doping substances of 22 November 2007 (German only)

Bundesgesetzblatt Jahrgang 2007 Teil I Nr. 58, ausgegeben zu Bonn am 28. November 2007

2607

Verordnung
zur Festlegung der nicht geringen Menge von Dopingmitteln
(Dopingmittel-Mengen-Verordnung – DmMV)

Vom 22. November 2007

Auf Grund des § 6a Abs. 2a Satz 2 des Arzneimittelgesetzes in der Fassung der Bekanntmachung vom 12. Dezember 2005 (BGBl. I S. 3394) verordnet das Bundesministerium für Gesundheit im Einvernehmen mit dem Bundesministerium des Innern:

§ 1

Bestimmung der nicht geringen Mengen

Die nicht geringe Menge der Stoffe im Sinne des § 6a Abs. 2a Satz 1 des Arzneimittelgesetzes ist die in der Anlage bestimmte Menge.

§ 2

Inkrafttreten

Diese Verordnung tritt am Tage nach der Verkündung in Kraft.

Der Bundesrat hat zugestimmt.

Bonn, den 22. November 2007

Die Bundesministerin für Gesundheit
Ulla Schmidt

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Anlage**I. Anabole Wirkstoffe****1. Anabol-androgene Steroide**

a) Exogene anabol-androgene Steroide

	nicht geringe Menge
1-Androstendiol	3 000 mg
1-Androstendion	3 000 mg
Bolandiol	3 000 mg
Bolasteron	450 mg
Boldenon	1 500 mg
Boldion	3 000 mg
Calusteron	450 mg
Clostebol	
– Depot-Zubereitungen	80 mg
– andere Zubereitungen	900 mg
Danazol	3 000 mg
Dehydrochlormethyltestosteron	450 mg
Desoxymethyltestosteron	450 mg
Drostanolon	1 015 mg
Ethylestrenol	450 mg
Fluoxymesteron	450 mg
Formebolon	450 mg
Furazabol	450 mg
Gestrinon	450 mg
4-Hydroxytestosteron	1 500 mg
Mestanolon	450 mg
Mesterolon	1 500 mg
Metandienon	150 mg
Metenolon	
– Depot-Zubereitungen	150 mg
– andere Zubereitungen	1 500 mg
Methandriol	450 mg
Methasteron	450 mg
Methyldienolon	450 mg
Methyl-1-testosteron	450 mg
Methylnortestosteron	450 mg
Methyltrienolon	450 mg
Methyltestosteron	450 mg
Miboleron	450 mg
Nandrolon	45 mg
19-Norandrostendion	3 000 mg
Norboleton	450 mg
Norclostebol	1 500 mg
Norethandrolon	450 mg

Oxabolon	75 mg
Oxandrolon	450 mg
Oxymesteron	450 mg
Oxymetholon	450 mg
Prostanozol	1 500 mg
Quinbolon	1 500 mg
Stanozolol	
– Depot-Zubereitungen	100 mg
– andere Zubereitungen	150 mg
Stenbolon	1 500 mg
1-Testosteron	1 500 mg
Tetrahydrogestrinon	450 mg
Trenbolon	450 mg

b) Endogene anabol-androgene Steroide

	nicht geringe Menge
Androstendiol	3 000 mg
Androstendion	3 000 mg
Androstanolon, synonym Dihydrotestosteron	1 500 mg
Prasteron, synonym Dehydroepiandrosteron, DHEA	
– Depot-Zubereitungen	144 mg
– andere Zubereitungen	3 000 mg
Testosteron	
– Depot-Zubereitungen	632 mg
– andere Zubereitungen	3 000 mg
ausgenommen Pflaster	67,2 mg

Bei Stoffen, die als Ester vorliegen, erfolgt Umrechnung auf die freie Verbindung.

2. Andere anabole Wirkstoffe

	nicht geringe Menge
Clenbuterol	2,1 mg
Tibolon	75 mg
Zeranol	4,5 mg
Zilpaterol	4,5 mg

II. Hormone und verwandte Verbindungen

1. Erythropoietin und Analoga

	nicht geringe Menge
Epoetin alfa, -beta	24 000 IE
Epoetin delta	24 000 IE
Darbepoetin alfa	120 ug
Methoxy-Polyethylenglycol-Epoetin beta	90 ug

2. Wachstumshormon und Insulin-ähnliche Wachstumsfaktoren, synonym Insulin-like Growth Factors, IGF-1

	nicht geringe Menge
Somatropin	16 mg
Mecasermin	216 mg

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3. Gonadotropine

	nicht geringe Menge
Choriongonadotropin (HCG)	24 000 IE
Choriongonadotropin alfa	6 500 IE
Lutropin alfa	2 250 IE

4. Insulin

	nicht geringe Menge
Insulin	400 IE

5. Kortikotropine

	nicht geringe Menge
Kortikotropin	1 200 IE
Tetracosactid – Depot-Zubereitungen – andere Zubereitungen	12 mg 0,25 mg

III. Substanzen mit antiestrogener Wirkung**1. Aromatasehemmer**

	nicht geringe Menge
Anastrozol	30 mg
Letrozol	75 mg
Aminoglutethimid	30 000 mg
Exemestan	750 mg
Formestan	600 mg
Testolacton	6 000 mg

2. Selektive Estrogen-Rezeptor-Modulatoren (SERMs)

	nicht geringe Menge
Raloxifen	1 680 mg
Tamoxifen	1 200 mg
Toremifen	1 800 mg

3. Andere antiestrogen wirkende Substanzen

	nicht geringe Menge
Clomifen	509 mg
Cyclofenil	12 000 mg
Fulvestrant	250 mg

B. Report of the evaluation team

Introduction

The visit of the evaluation team was carefully organised by the Federal Ministry of the Interior, situated in Bonn. It covered all the articles of the Convention. The Compliance with Commitments report was very informative and well written. The visit started with a meeting at the Federal Ministry of the Interior. The team got the possibility to put questions, besides to officials in the Ministry, to representatives from the Federal Ministry of Health, Federal Criminal Police Office, Customs Criminological Office, Commissioner for Data Protection and Freedom of Information of North-Rhine/Westphalia as well as from the National Anti-Doping Agency (NADA). During the visit the team also had the opportunity to visit the NADA in Bonn, the Interior Ministry of North-Rhine/Westphalia in Düsseldorf, the Institute of Biochemistry at the German Sport University in Cologne and the German Olympic Sports Confederation (DOSB) in Frankfurt/Main. Thus the team had the possibility to meet and interview relevant parties. However, the time was sometimes too short to go more into details with some of the participants (e.g. data protection, athletes, medical doctors or coaches).

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 report clarifies that the Federal Republic of Germany ratified the Anti-Doping convention in 1994 and the Additional Protocol in 2007. The implementation of the Convention is primarily based upon cooperation between the Ministry of the Interior, which has set up the NADA, the Länder Ministries, the sport and NADA. The autonomy of the sports is highly respected and the implementation of anti-doping policy is based on agreements between the state and sports associations.

The cooperation between the Federal Ministry of the Interior, the Conference of Sport Ministers of the Länder (SMK), the German Olympic Sports Confederation and NADA on fulfilling the aims of the Convention and other commitments is formalised in several agreements, e.g. the National Plan on Doping Prevention, adopted by the four partners in September 2009.

The evaluation team found that the political commitment expected in Art. 1 is fulfilled.

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.

a) The definition of doping in sport in the NADA Code corresponds to the definition in the World Anti-doping Code (WADC). Therefore the definition applied is broader than the one in the Convention and includes also other anti-doping rule violations (e.g. whereabouts).

b) The WADA list of forbidden substances is implemented in the NADA Code and binding for the associations and the athletes. The Pharmaceutical Products Act refers when it comes to doping purposes in sport to the Appendix to the Anti-Doping Convention. Hitherto the list decided upon by the Monitoring Group is the one WADA publishes yearly.

c) As it seems all sportsmen and sportswomen who take part in organised sport activities are included in at least some parts of the German anti-doping work.

The evaluation team considers that the definition of “sportsmen and sportswomen” in the Convention is fully covered.

2. There is a specific procedure for approval of the list of banned pharmacological classes of doping agents and doping methods in Germany after the Monitoring Group has accepted it. The list will be published in the Federal Law Gazette after consultations between the Federal Ministry of the Interior, the Federal Ministry of Health, the Federal Ministry of Justice and the Federal Foreign Office. In addition, the list adopted by WADA will be published on the NADA website. It is thus the basis for prosecuting doping offences in Germany. Should the WADA list differ from the list decided upon by the Monitoring Group, which is fairly improbable, the problem would have international complications and affect all signatories to the Convention and would have to be dealt with in some way.

The evaluation team finds that the scope of the Convention and the definitions applied are taken into account in a satisfactory manner.

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.

Sport in Germany is characterised by a strong club culture. There are about 91,000 sports clubs and associations with about 27 million members in Germany. They all come under the umbrella of the German Olympic Sports Confederation (DOSB).

From the viewpoint of the legislator, it is crucially important that sports clubs in Germany enjoy a wide measure of autonomy thanks to the German Constitution (“Grundgesetz”), which prescribes that

sport should be separate from the state. This in turn means that the state can exert control over sport and impose requirements with regard to anti-doping provisions only by the distribution of funds to promote sport or through an agreement with a sports association. Financial grants to sportsmen and women, trainers, managers and associations are tied to clear rules governing compliance with anti-doping provisions. This also ensures that in the event of violations of doping regulations these grants can also be claimed back.

Germany does not have a uniform anti-doping law such as those we find in countries such as France, Portugal, Austria and Spain. The fight against doping is based on several legal regulations as well as on the NADA Code (which in turn is based on the World Anti-Doping Code). The relevant provisions are contained in the statutes of the sports associations as well as in the licensing agreements and the agreements with athletes.

Since 1998 provisions under criminal have been included in the Pharmaceutical Products Act which has been significantly tightened and enhanced in 2007.

There is a small unit consisting of 5 ½ (five and a half) persons in the German Ministry of the Interior. This unit is part of the Sports Department (about 60 employees) and deals with the fight against doping and violence as well as with fair play and tolerance. This unit is relatively small, as the central government focuses primarily on top-level sport.

Several ministries and departments are concerned with anti-doping measures: the Federal Ministry of the Interior (distribution of grants), the Federal Ministry of Health (pharmaceutical products), the Federal Criminal Police Office, the Customs Criminological Office as well as the Commissioner for Data Protection and Freedom of Information (of North-Rhine/Westphalia).

The Evaluation Team had an opportunity to exchange information with representatives of these bodies. The overall impression of the Evaluation Team can be summed up as follows:

- All those involved take the problem of doping seriously and want to combat it.
- During the talks there was great openness about the possibilities and the limitations of the fight against doping.
- According to representatives who took part in the discussions, an anti-doping law is not necessary because there are no significant deficits in the existing system. However, there is a discussion in legal circles about the introduction of a crime of "sport fraud" and unrestricted penalisation in the case of particularly health-endangering doping substances. Our discussion partners said that these potential new statutory offences were controversial, because it would be difficult on the one hand to establish a legally protected interest such as the right to fair competition while on the other hand every individual has a constitutionally guaranteed right of self-damage.
- The Commissioner for Data Protection and Freedom of Information of North- Rhine/Westphalia expressed a view that it would guarantee the right of NADA and the sports associations to collect, store and share personal information regarding athletes and others as set out in the NADA Code if there was a legal provision that made this permitted or if the athletes would give their voluntary consent. The Commissioner preferred to develop a legal provision.
- The customs authorities in their investigations are not bound by earmarking from the Drugs and Medicines Act as its mandate is to supervise the flow of goods in general. In 2008 the customs investigation service carried out 137 investigations in connection with drugs and medicines

(most of which involved doping substances such as anabolic steroids). In the framework of its public relations activities, the Customs tries to inform and to raise public awareness of these issues in specific cases (e.g. discovery of an underground laboratory for anabolic steroids, analysis of falsely declared, dangerous doping substances)

- The Customs Criminological Office prosecutes illegal imports whereas the Federal Criminal Police Office is concerned with potentially criminal structures. Its investigations also relate to pharmaceutical products that are bought, sold and administered outside "normal" structures. In the case of these investigations, administrative assistance is given between official bodies but due to legal restrictions not with the NADA. However, there is close cooperation between public prosecutors and NADA.
- In a number of federal states, groups of prosecutors are now working on the fight against doping as a priority.
- There is no proper formal co-ordination forum bringing together individual actors involved in the fight against doping. By contrast, notes are informally and occasionally exchanged with the specialist state prosecutors. At the political Land level, notes are compared at the Conference of Sport Ministers, which receives proposals in the field of doping prevention from a round table.
- All the parties involved would welcome greater and more formalised cooperation between state bodies and with the National Anti-Doping Agency NADA. However, the existing legal constraints (for example data protection) do not permit formal exchanges.

The Evaluation Team considers that the obligations stemming from Article 3.1 have been fulfilled but improvements in matters of detail could and should also be achieved.

It is planned that the effectiveness of the 2007 "Act on the Improvement of the Fight against Doping in Sport" will be reviewed in 2012. The Evaluation Team welcomes this move and recommends that this review should be included in the planned Follow-up Report of the evaluation visit, which is due to be published in 2012.

In the framework of the above-mentioned review, the following points should also be taken into consideration:

- **Increased and formalised cooperation or a regular exchange of experience between the various actors involved in the fight against doping.**
- **The creation of a legal basis to ensure that a formal and comprehensive exchange of information and experience can take place rapidly between state investigating bodies and NADA.**
- **An investigation as to the necessity of creation of a legal basis for processing personal data in anti-doping measures.**

Information and awareness-raising campaigns when doping substances are discovered should not be carried out only by one official body (for example Customs). Cooperation with other official bodies and NADA is recommended.

3.2 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 main responsibility for the implementation of this article lies with the German Federal Ministry of the Interior, which exerts influence solely through the distribution of grants or through agreements with those sports associations that are not subsidised by the government. All associations have signed an agreement with the NADA to abide by the NADA Code.

The responsibility for practical measures in the fight against doping was transferred to the National Anti-Doping Agency NADA, which was founded in 2002. The first five years of this body's existence were marked by large discrepancies between expectations and the inadequate resources available. As a result, the NADA was on the brink of collapse in 2007.

The reconstruction phase was completed in 2008.

The core responsibilities of the NADA are:

- Implementation of a standardised doping control system in Germany
- Granting of medical exemptions (TUE) and answering of questions on drugs and medicines
- Prevention
- Inclusion of World anti-doping Code in the NADA Code
- (Legal) advice for associations and athletes
- Establishment of an independent sport arbitration court (since 1 January 2008)
- International cooperation

The NADA is a private law foundation with a Foundation Board, a Board of Directors and a secretariat. The foundation currently has its own capital of about €10 million, an annual budget of about €7 million (including about €2 million earmarked for financial support for the two accredited laboratories in Germany) and about 22 employees.

The NADA co-ordinates and decides on all out-of-competition controls held in Germany. In 2008, 8,000 such controls (urine and blood tests) were carried out. To this end the NADA had to conclude agreements with every single sport association.

By contrast, tests during competitions are still mainly carried out by the associations themselves. About 4,500 in-competition controls were carried out in Germany in 2008.

The NADA has no doping controllers of its own. For "historical" reasons, all controls are carried out by the private company Physical Work Control GmbH (PWC). NADA commissions PWC, adopts regulations on the quality and procedure of controls and evaluates the work of PWC. Thus, NADA has influence on the type and quality of controls.

Since 2009, the NADA is responsible for all associations in the management of the whereabouts and missed test failures as well as for the reprimands of athletes resulting from these failures.

As mentioned above, the German sport associations fulfil the obligations imposed by the NADA Code. Compliance is ensured thanks to the possibility of reclaiming federal government grants if associations do not comply with the doping provisions.

The Evaluation Team congratulates the responsible bodies for ensuring that in recent years NADA has developed into a strong institution that is recognised at home and abroad as a reliable partner. In its view the requirements specified in Article 3.2 are satisfied and the system operates well. However, it would like to suggest the following improvements:

In the next phase the NADA should be strengthened. The following measures in particular should be considered:

- **Assumption of responsibility for all controls in Germany (i.e. individual sport associations will no longer carry out their own controls). The agreements with each sport association would then cease to be valid.**
- **Sole decision-making responsibility for the assignment of controls and for the implementation of controls to be in the hands of the NADA.**
- **NADA to be responsible for the controllers. This would mean better monitoring and security/reliability of controls by cutting down the number of interfaces.**

The main responsibility for the implementation of this article lies with the German Federal Ministry of the Interior, with its influence on sports, but also with NADA (as an independent foundation under private law) and sports organisations

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.

As stated above, there is no uniform anti-doping law as such in Germany. Anti-doping measures are included in various acts, for example the Medicines and Drugs Act, the Act on the Customs Investigation Service and the Federal Criminal Police Act, as well as the amended Criminal Code of 1 September 2009, which introduces the leniency provision in Section 46b stipulating that sentences against offenders who committed doping-related crimes on a gang or commercial basis may be reduced if the offender provides information which help the investigation. Moreover in 2007 in the Act on Improving Measures against Doping in Sport several of these acts were amended.

The Evaluation Team was able to speak to representatives of various state organisations about these measures. Illicit trading in doping substances has been punishable under the Pharmaceutical Products Act since 1998. The Act on Improving Measures against Doping in Sport of 2007 increased law enforcement powers regarding acts committed on a gang or commercial basis. More effective action can be taken against black-market trading in prohibited substances (especially with anabolic steroids). A number of spectacular discoveries and investigations by the Customs authorities as well as several criminal investigations by the Federal Criminal Police Office have underlined this.

Experience with the Drugs and Medicines Act has been mixed: especially the desired restriction of the use of doping substances in recreational sport and fitness centres has not been achieved to full satisfaction. In 2007 in the "Article Act" ("Act on the Improvement of the Fight against Doping in

Sport”), various articles were included in several laws with the aim of strengthening the fight against doping in sport. Amendments and additions were made to the Federal Criminal Police Act and to the Drugs and Medicines Act. The main changes involve the introduction of more severe penalties in cases of professional trading in illicit drugs and when these substances are given to minors, the inclusion of warnings on packages and specialist information in the case of new drugs that contain doping substances, the transfer of investigation authorisations in the case of internationally organised trade with doping substances to the Federal Crime Office (BKA) as well as mandatory penalties for the possession of large amounts of particularly health-endangering doping substances. In addition, telephone lines may be intercepted in cases of offences committed on a gang or commercial basis.

The above mentioned changes in legislation have their relevance expressly for doping purposes in sport. Even if this was not pronounced in the hearing the team carries some suspicion that there might be some problems in a criminal investigation to prove the purpose of the accused.

The team applauds the warning labels on pharmaceutical products which can lead to positive results in the event of a doping test but has a question mark concerning a non prohibited product already out on the market when in a new version of the list a substance in the product is forbidden.

These two observations are just remarks that the evaluation team wants to make – not resulting in a recommendation.

Germany thus fulfils the requirements set out in Article 4.1 of the Convention. Despite this, the Evaluation Team recommends that experience with the new legal provisions should be described in the planned effectiveness review in 2012 (see the recommendation under article 3.1)

4.2 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.

This article is well implemented in Germany. The Evaluation Team received the same feedback on this from the parties consulted (official bodies, NADA, associations). The implementation of the WADC via the NADA Code and in the statutes of the associations has taken place. The Ministry of the Interior checks this annually by sending out questionnaires. The associations are also required to submit their updated statutes. The NADA checks this information and if it is not satisfied that the requirements are met it can apply via the Federal Administrative Office for reductions to be made in the grants to the associations concerned. This happened in the case of a German ice hockey player. As a result, the grant paid to the German Ice Hockey Association in 2008 was reduced.

Anti-Doping regulations are also included in the employment conditions of trainers and of the personnel of the associations.

Germany therefore meets the requirements of Article 4.2 of the Convention.

4.3 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.

As stated above, the German Ministry of the Interior contributes an annual sum of about €5 million to the fight against doping. These funds are granted mainly to NADA for out-of-competition controls, for applied research and development (by the two accredited laboratories in Cologne and Dresden) and for prevention measures. It has already been mentioned that almost all the major sport associations in Germany are dependent on state grants. The relevant grant agreements contain anti-doping clauses that require the associations to implement anti-doping measures and the NADA Code. Similar clauses are also written into the contracts of trainers and personnel of the associations. In the event of violations of these provisions, the grants may be reduced or withdrawn completely. The associations that receive government finance also need to demonstrate that they have implemented the NADA Code in their statutes.

The Evaluation Team considers these requirements imposed on the associations to be important. However, in the team's view the requirements for the associations could be tied more specifically to the objectives to be fulfilled (for example holding anti-doping events, involvement of elite athletes to promote doping-free sports, special measures during competitions). Measures of this kind are not included in the Convention, but they would strengthen the existing good measures and requirements.

Germany therefore fulfils the requirement set out in Article 4.3 of the Convention. To strengthen existing measures and provisions, the Evaluation Team suggests considering further requirements for the associations in which they would actively support specific anti-doping measures.

4.4 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.

In Germany, the current WADC has been implemented in the form of the NADA Code. The NADA Code has also been implemented in the statutes of the sport associations. The NADA Code is compatible with the principles of the Convention.

Germany therefore completely meets the requirements of Article 4.4 of the Convention.

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; or

b to assist its sports organisations to gain access to such a laboratory on the territory of another Party.

Germany has two laboratories accredited by WADA (in Dresden and Cologne). Both laboratories receive substantial contributions from the federal government. Up to 2007 they received €0.8 million annually. In 2008 they received €1.6 million and from 2009 the subsidy has risen to €2.0 million. Since 2009 these sums have been included in the NADA budget, but they are earmarked for research in the two laboratories.

The Cologne and Dresden laboratories have a good reputation at the international as well as the national level. In 2008, the Cologne laboratory analysed 12,262 samples, while the Dresden laboratory analysed 6,517 (a total of 18,779 samples). This means that together they analysed far more than the 13,000 or so tests carried out in German sport. Some 5,800 additional tests were carried out on behalf of other countries and international sport associations. In addition, all samples from German horseracing and show jumping are carried out in Cologne. A system of data exchange between the two laboratories has also been established, particularly in the area of longitudinal steroid profiles for individual athletes. The Cologne laboratory has established a database for this to which NADA and the two laboratories have access.

The Evaluation Team had the opportunity to talk to Prof. Wilhelm Schänzer, the head of the Cologne laboratory, and to Dr Hans Geyer. All questions were answered frankly and exhaustively.

The laboratory in Cologne is part of the Institute of Biochemistry in the German Sport University (DSHS). The Institute of Biochemistry under its former head Prof. Manfred Donike has been involved in doping analysis for over 30 years. In fact it was one of the first laboratories to take a leading world role in developing new methods of analysis, establishing a quality and accreditation system and in helping to set up laboratories in other countries. It has continued to play this pioneering role and it remains a world leader in various areas of research (e.g. development of new methods of hormone analysis, the detection of SARMS and the area of gene doping). Since they were founded these laboratories have received support from the federal government. About 60% of the income of the Cologne laboratory comes from the provision of services, about 20% from the Ministry of the Interior and about 20% from fund-raising and research grants.

Germany therefore meets the requirements of Article 5.1 of the Convention.

5.2 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 integration of the Cologne laboratory in the DSHS provides the ideal conditions for carrying out the relevant research and for employing and training highly qualified staff. The “Centre for Preventive Doping Research” houses the accredited Cologne laboratory, has its own professorship and is home to the Manfred Donike Institute for Doping Analysis and the Institute for Sports Medicine. It also has links to other DSHS institutes such as training science, education and social sciences. Joint research projects are carried out in cooperation with these partners. Moreover the laboratory holds educational and training courses not only for laboratory staff but also for opinion leaders from the field of sport such as trainers, sports doctors, sport students and journalists, as well as lawyers and politicians. In 2009 for example (up to the time when the Evaluation Team visited), over 3,000 persons took part in training consisting of about 50 events with 105 lectures and courses. In addition to this, scientists from the laboratory also give courses on doping as part of the university teaching programme. The Cologne laboratory also has its own website dealing with subjects such as doping analysis, doping substances and their effects and side-effects. It also presents a doping lexicon and has a special area for school pupils (www.dopinginfo.de).

The Cologne laboratory cooperates actively with other accredited laboratories, for example with Paris and with the Swiss laboratory, with which a staff exchange took place in 2008. The aim was for participants to familiarise themselves with different methods of analysis and to standardise approaches.

In addition to its role as an accredited laboratory, Dresden also cooperates with other institutions, particularly in the forensic field and the area of medical law.

Both laboratories are also actively engaged in research. The Cologne laboratory in particular has in recent years not only received research grants from the German government but also from other sources (especially WADA). The laboratory's list of publications is impressive. In the years 2008/2009 alone, over one hundred articles appeared in scientific journals, in abstracts for conferences and in books. On top of this a tradition has developed for Cologne to invite scientists to the “Manfred Donike Workshops” in doping analysis every year. The purpose of these workshops is to provide training for scientists from other analysis laboratories. The scientific articles are published in a conference volume every year (by the time of the visit: there were 26 conference volumes published).

Germany therefore satisfies the requirements of Article 5.2 of the Convention. The Evaluation Team recommends that the federal government should continue to contribute substantial funds to research so that the high internationally recognised level of the laboratories in Cologne and Dresden can be maintained.

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.

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.

In recent years Germany has developed a wide spectrum of information and prevention measures that have been internationally recognised. The Evaluation Team is impressed by the diversity and the high quality of the measures and of the information material. These measures were carried out by NADA and also by the German Olympic Federation and by German Sport Youth (in cooperation with Heidelberg Pedagogical University).

Here is a list of some of these measures:

NADA:

- “High Five” presentation for young people – a combination of leaflets, an Internet presentation and an information stand with a quiz.
- NADA information tour of the elite sport colleges (in 2009 all 30 elite sport colleges were visited with a stand staffed by specialists).
- NADA information tour at “Youth trains for Olympia”.
- Internet trainer platform for education and further training of trainers and instructors.
- Trainer education and further training (in cooperation with the Land sport federations and the Cologne Trainer Academy).
- Brochures for parents and workshops for parents and different peer-groups
- Newsletter, brochure on gene doping,
- USB stick for elite athletes, containing the NADA Code and most important information and regulations

DOSB / German Sport Youth:

- “Sport without Doping” work portfolio with brochure, audio-visual media and background information on CD.
- Training of opinion leaders
- Peer group project with junior ambassadors on doping prevention.

In September 2009, the Federal Ministry of the Interior, the Länder (head of the Conference of Sports Ministers), the Germany Olympic Sports Confederation and NADA adopted a National Doping

Prevention Plan to coordinate all anti-doping measures. On 30 October 2009 a round table composed of numerous parties involved (government, sport, medical staff, pharmacies, training centres, research, etc.) made some specific initial decisions on responsibilities, demand and projects.

During one of the interviews on the matter of education it was mentioned that the information and education did not reach out to young people up to an age of 10 years. In future, it is intended to reach this age group through special doping prevention services. One of the reasons why health authorities do not provide even more support for doping prevention is that they consider doping a minor problem compared to other addictions.

Here is a summary of some of the main points of the National Doping Prevention Plan:

- In future, doping prevention is to receive greater resources, to have greater scope for action and to be carried out more systematically.
- Prevention measures for young athletes and those around them are to be introduced as soon as possible.
- All sport structures are to be involved in doping prevention throughout the country.
- The prevention plan aims to systematise the exchange of experience between partners, to promote exemplary projects, to put updated information media in a network and to make it available to all partners.
- All the doping prevention measures by the partners in all areas of sport are to be linked. NADA will be responsible for updating and for ensuring the correctness of information and of working material.

NADA is also playing a decisive and active role in the development and coordination of information and prevention material in an existing multilateral agreement with Austria, France and Switzerland.

The Evaluation Team is impressed by these achievements and by the determination to strengthen the role of doping prevention in future. It welcomes the fact that the Ministry of the Interior already contributes 300,000 € a year to NADA's broadly-based prevention programme. However, the implementation of the specific prevention measures in the National Doping Prevention Plan will require additional financial support both from the federal states and from the federal government with the aim also to educate other youngsters than those engaged in top-level sports about the dangers of using drugs.

In the National Doping Prevention Plan Germany also envisages measures and programmes that will meet the requirements of Article 6.2 of the Convention.

Germany meets the requirements of Article 6 of the Convention. The Evaluation Team congratulates it on the comprehensive approach to implementation and hopes that the federal government can provide the additional funds to ensure that the National Doping Prevention Plan can broadly be realised at the level of youth sport and of its environment.

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.

The evaluation team had the possibility to visit the German Olympic Sports Confederation (DOSB) and met representatives from the Confederation but also from gymnastics, volleyball and swimming. Unfortunately the time to ask questions was short but the team anyhow got a view of the confederation's and the associations' involvement in anti-doping activities.

At the meeting with DOSB the evaluation team also met a representative of the top athletes, Marion Rodewald, a field hockey player, who among other achievements won a gold medal in 2004 Olympic Games in Athens and in 2007 European Championships in Manchester.

The DOSB has a coordinating function between sports associations and government. The confederation works with promotion of sport, changing of experience between sports, especially between Olympic teams, and prevention and education.

The anti-doping work in Germany is described under 2.2 in the evaluation report. Through agreements, based on conditions for funding or negotiations, all national level associations, Länder level associations, clubs and athletes are bound by the NADA Code, which is the implementation of the World Anti-doping Code (WADC).

German sport has with the creation of NADA and with the agreements between the government and associations to follow the NADA Code, either this is a result of conditions of funding or negotiations, given the basis for a successful anti-doping work, harmonised between sports organisations in the country.

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 judgment 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.

2 a. The World Anti-Doping Program (Code and Standards) is agreed upon by all international sports associations and many national anti-doping agencies. The NADA Code is the implementation of WADC in Germany. The standards include the Prohibited List and the Testing Standard. The Code provides for harmonised disciplinary sanctions.

2 b. The Prohibited List as accepted by WADA is in force for all athletes in Germany who are member of a national sports association.

2 c. In principle the out-of competition testing is carried out by NADA. The doping controls are carried out by an outside contractor Physical Work Control GmbH (PWC). Most associations and other competition organising bodies carry out in-competition testing by themselves. Some of the associations have their own doping control officers, educated by DOSB, others engage PWC. Some associations though, have transferred in-competition controls to NADA.

In-competition tests are handled according to the NADA Code and the sports own rules.

Doping controls are either carried out by the company PWC or by doping control officers educated within the DOSB or the sports association. Neither of these ways to operate a doping control is conformed by an ISO certified quality system for doping control and doping controls are not subjected to independent audits. For the benefit of the athletes undergoing a doping control a certification against an ISO quality system is highly recommended. However, PWC has put in place a quality management system which since 2001 regularly has been certified according to ISO standard "DIN EN ISO 9001:2000".

2 d. The associations have implemented the NADA Code. Through contracts with the entourage, also these people are bound by the Code.

Many associations have an Anti-Doping Commission, which is independent from the federation, and which mainly deals with hearings and sanctions. With regard to therapeutic use exemptions (TUE) applications, NADA has installed a TUE commission according to the WADA standards which is responsible for overseeing all athletes not being member of an international registered testing pool in TUE affairs. All associations also engage a doping commissioner, in some associations a full staff member in others a volunteer position, who acts as a prosecutor in doping cases.

The existence of an adverse analytical finding in an out-of competition sample is reported to NADA, which is responsible for result management. The NADA Code describes how the result management is handled. In consultation with the athlete concerned, NADA sends this information or other information that might suggest an anti-doping rule violation to the applicable association after the reason for the result has been found. A doping commissioner of the association acts as prosecutor. The case is decided upon in some sports by a newly founded arbitration court independent from the sport, German Sport Arbitral Court, in other sports within the association. NADA has an insight in the matters dealt with and has the right to appeal to the next instance, a court of arbitration.

For the civil rights of the athlete and for the transparency of the sanctioning system it would be recommendable that those sport federations, who use their own sanctioning bodies, use the independent Court of Arbitration instead. The same goes for the processing of a review of a denied application for a therapeutic use exemption concerning a national level athlete. The team recommends the Government to try to use its influence on sports federations to achieve such an improvement.

2 e According to the World Anti-Doping Code and the NADA Code sanctions can be applied to athlete's support personnel.

2 f All sanctions are recognised by all sports and all national anti-doping agencies. The German legislation, referred to under Article 4, can give ground for also legal proceedings.

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.

3 a. By making it a prerequisite for a sports organisation to apply the NADA Code to get funds the Federal Government has encouraged sports organisations to carry out anti-doping activities, including doping controls. With sports associations that do not get funding from the Government, negotiations have taken place with the same purpose. According to the information in the evaluation report NADA conducted in the Olympic year 2008 some 8,000 out-of-competition tests from the three testing pools, consisting of 9,000 athletes. The testing pools range from international level athletes to athletes in national teams. NADA also administers the whereabouts system concerning the athletes in the testing pools. For out-of competition tests the associations pay NADA a lump sum of 100 € per test. The Federal Ministry of the Interior (BMI), to 2011, contributes 1 million € annually. The BMI finances the analyses of associations, funded by the government. Other associations bear their own analysis costs.

The controls are carried out without advance warning and are mostly target controls for more intelligent testing. The Standard for Testing is implemented as an annex to the NADA Code. About 4,000 in-competition controls are conducted.

In-competition controls are carried out on the higher levels of competitions. Expenses are paid by sports associations /organisations. The BMI provides funded sport associations with a certain number of free analyses. Further expenses are paid by the associations /organizers.

3 b Germany has implemented the requirements in the Convention concerning testing foreign athletes or testing abroad by applying the Additional Protocol to the Convention. Also the WADC allows for athletes to be tested wherever they are.

3 c. To be eligible to take part in the Olympic Games the athlete has to be tested. A person who has been sanctioned according to the NADA Code is not allowed to take part in any sport organisation's competitions or organised training.

3 d. How much the German athletes are promoted to take part in anti-doping work on international level stayed unclear for the evaluation team. It should be noted that Meike Evers and Claudia Bokel are two German representatives in the WADA "Athlete Committee" and that Marion Rodewald is a member of the EOC "Athletes Commission". Marion Rodewald told about her impressions on international and national efforts to fight against doping. She admitted that the whereabouts system is necessary to conduct intelligent doping testing but that the reporting to ADAMS is not user-friendly. Athletes take part in discussions with NADA and attend a yearly meeting with Doping Control Officers.

3 e. The two doping control laboratories in Cologne and Dresden analyse the doping samples collected on behalf of the NADA and from the in-competition testing in Germany. The extensive work of the Cologne laboratory is reported on under Article 5.

The evaluation team considers that the requirements in art. 7 are fulfilled. Though the team – as pointed out under Article 3.2 – thinks that strengthening NADA would even improve the anti-doping work in Germany. For the legal security to the athlete during doping controls and the eventual investigation concerning an anti-doping rule violation afterwards, the team recommends that the DCO's, either coming from PWC or from an association, would undergo the process of a certification against an ISO quality system.

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; and

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.

The report well describes the international cooperation that Germany is involved in. The evaluation team finds that the requirements in Article 8 are fulfilled.

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

Germany completes the annual data base questionnaire of the Monitoring Group, as well as other inquiries from working groups for improving areas in anti-doping work within the Council of Europe.

General conclusions and recommendations of the evaluation team

The German anti-doping work fulfils with a good margin the commitments under the Council of Europe's Anti-Doping Convention. The evaluation team noted with appreciation the strengthening of NADA. Some of the recommendations below concerns NADA and could even improve the German anti-doping measures to the benefit of all stakeholders and specially the athletes.

Some of the recommendations regard the review of the Act on the Improvement of the Fight against doping in sport. The results of the review can also lead to new improvements.

As a conclusion the evaluation team found the anti-doping work of good enough value and could not find very many recommendations to improve the already good system. The recommendations thus serve as suggestions for further development of the German anti-doping measures. No prioritising could be made between the recommendations.

Article	Recommendation	Actor concerned
3.1	<p>The review of the Act on the Improvement of the Fight against Doping in Sport, scheduled in 2012 should include the following:</p> <ul style="list-style-type: none"> • Increased and formalised cooperation or a regular exchange of experience between the various actors involved in the fight against doping. • The creation of a legal basis to ensure that a formal and comprehensive exchange of information and experience can take place rapidly between state investigating bodies and NADA. • An investigation as to the necessity of creation of a legal basis for processing personal data in anti-doping measures. 	Government
3.1	Cooperation between Customs and other official bodies and NADA on information and awareness-raising campaigns when doping substances are discovered.	Government
3.2	Consideration if NADA should take over the responsibility for all controls in Germany, including sole decision-making responsibility for control planning and for the controllers	Government and federations
4.1	The experience with new legal provisions should be described in the review, mentioned on the recommendation concerning article 3	Government
4.3	Consideration of further requirements for the federations to support specific anti-doping measures	Government and associations
	Continued contribution of substantial fund to	Government

5.2	research to keep the high level of the two laboratories	
7.	Doping control officers should undergo the process of a certification against an ISO quality system	NADA and associations
7.	Influence those sports federations that have their own sanctioning system to use an independent Court of Arbitration for sanctioning people according to the NADA Code and for reviews of denied applications for therapeutic use exemptions	Government

Acknowledgments

The preparations for the meeting in Germany were very good. Although the team travelled from Bonn to Düsseldorf, after that to Cologne and finished the visit in Frankfurt/Main the programme ran smoothly. The travels were conducted by car and gave the team members an opportunity to see some beautiful views. Everything was done to give the team the information that was asked for.

The team would like to thank especially Mr Friedrich-Wilhelm Moog who constantly accompanied us and who managed to see to it that we got answers to all our questions. The team would also like to thank the representatives on governmental and Länder level.

The team appreciated the presentations given by NADA and by representatives from the laboratory in Cologne. Last but not least it was interesting to hear the representatives from DOSB, some national sports associations as well as athletes.

Composition of the evaluation team

Dr Matthias Kamber (Switzerland), head of the team

Dr Anik Sax, (Luxembourg)

Mr José Eduardo Fanha Vieira (Portugal)

Markus Adelsbach (CoE)

Kristina Olinder (Sweden), coordinator

Programme of the evaluation visit

Monday 23 November 2009

Afternoon

Meeting at the Federal Ministry of the Interior, Bonn

Representatives from

- Federal Ministry of the Interior – Division SP7
- Federal Ministry of Health – Division 112
- Federal Criminal Police Office – Division SO 3 – Investigation group on doping
- Customs Criminological Office
- Federal Commissioner for Data Protection and Freedom of Information – Division VII
- Land Commissioner for Data Protection and Freedom of Information of North-Rhine/Westphalia
- National Anti-Doping Agency (NADA)
- Visit to the National Anti-Doping Agency, Bonn

Tuesday 24 November 2009

Morning

Transfer to Düsseldorf

Meeting at the Interior Ministry of North-Rhine/Westphalia

Representatives from

- Ministry for Interior of North-Rhine/Westphalia – Division 81 of the Directorate-General for sports
- Land Sport Federation of North-Rhine/Westphalia

Afternoon

Transfer to Cologne

Visit and meeting at the Institute of Biochemistry at the German Sport University Cologne.

Wednesday 25 November 2009

Morning

Transfer to Frankfurt/Main

Visit to German Olympic Sports Confederation (DOSB), including meeting with

- National sports associations
- Athletes, doctors and coaches

Noon

End of visit

C. Comments by Germany

Germany would like to thank the Council of Europe for presenting the draft country report which contains very helpful and valuable recommendations, and in particular for the very useful and pleasant visit and the questions of the members of the CoE delegation which testify great knowledge and a thorough understanding of the matter.

For future visits, Germany would like to suggest considering whether it might be reasonable in individual cases to extend the duration of the CoE visit beyond the 2½ days which all parties involved consider a tight schedule; this would permit more detailed discussions (with parties involved) and further visits (e.g. laboratories, ministries).

We consider all recommendations helpful and will of course review them in detail, in particular in the context of the forthcoming evaluation of the Act on the Improvement of the Fight against Doping in Sport in 2012. A follow-up report will include the results of these reviews.

For the time being, we would like to comment on the following recommendations:

- *Increased and formalised cooperation or a regular exchange of experience between the various actors involved in the fight against doping:*
Such an exchange is already taking place (e.g. in the working groups of the Conference of Sports Ministers, among the DOSB anti-doping commissioners, within the NADA working groups). It could be intensified but does not require dedicated legislation.
- *The creation of a legal basis to ensure that a formal and comprehensive exchange of information and experience can take place rapidly between state investigating bodies and NADA:*
NADA is able to do so pursuant to Art. 14.2 NADC. Given the strict provisions of the German Code of Criminal Procedure (StPO), it would be difficult or even impossible to create a legal basis ensuring that law enforcement authorities notify NADA before ongoing investigations are concluded. However, we are examining whether such a provision could be included in the justice administrations' directives on notifications in criminal matters (MiStra) which make recommendations regarding the bodies to be notified by law enforcement authorities.
- *An investigation as to the necessity of creation of a legal basis for processing personal data in anti-doping measures:*
The prevailing opinion in Germany is that voluntary consent is a sufficient and applicable legal basis. The Federal Government shares this view.
- *Consideration of further requirements for the federations to support specific anti-doping measures:*
Unrestricted active participation of beneficiaries in the fight against doping is among the requirements of grant approvals and must be implemented by the federations through appropriate activities and measures.
- *Influence those sports federations that have their own sanctioning system to use an independent Court of Arbitration for sanctioning people according to the NADA Code and for reviews of denied applications for therapeutic use exemptions:*
It is true that this is compulsory only in the second instance (= remedy). An obligation to use a court of arbitration already from the first instance – as recommended – had been controversially discussed upon the introduction of the 2009 NADC but in the end has not been accomplished.