

**MONITORING GROUP (T-DO)**

ANTI-DOPING CONVENTION

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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**Recommendation on the Protection of  
Whistleblowers in the Context of the Fight  
Against Doping in Sport**

# Recommendation on the Protection of Whistleblowers in the Context of the Fight Against Doping in Sport

## PART I. PREAMBLE

### WHEREAS

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

*Having regard* to Article 3.1 of the Convention, which obliges States Parties to co-ordinate the policies and actions of their government departments and other public agencies concerned with combating doping in sport;

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

*Bearing in mind* the Convention of the Council of Europe for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), in particular in relation to Article 8 (right to respect for private life) and Article 10 (freedom of expression);

*Taking into account* the provisions of Recommendation CM/Rec(2014)7 of the Council of Europe on the protection of whistleblowers and the Resolution 2300 (2019) of the Parliamentary Assembly of the Council of Europe on Improving the protection of whistleblowers all over Europe;

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

*Taking into consideration* the World Anti-Doping Code and in particular its Article 2.11 which States that acts by an athlete or other person to discourage or retaliate against reporting to authorities constitute a violation of anti-doping rule.

*Acknowledging* Article 6 (Whistleblower rights) of WADA Athletes’ Anti-Doping Rights Act;

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

*Noting* that ensuring clean sport requires to facilitate disclosure of information on possible doping practices;

*Committed* to protect athletes or other persons who disclose such information;

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

## **PART II. DEFINITIONS AND SCOPE OF THE RECOMMENDATION**

### **For the purposes of this recommendation and its principles:**

“Whistleblower” means any person who provides evidence or information that relates to an alleged anti-doping rule violation or non-compliance with the World Anti-Doping Code to persons or organisations that may be able to take action.

“Reporting” means a whistleblower’s formal act of disclosing an alleged violation or non-compliance through a reporting channel.

“Reporting channel” means a channel designed to receive and handle disclosures.

“National Anti-Doping Organisations” (NADOs) means the entities designated by each country as possessing the primary authority and responsibility to adopt and implement anti-doping rules, direct the collection of Samples, the management of test results, and the conduct of hearings at the national level.

The recommendation covers any sportsman or sportswoman and any person involved in sport (such as coaches, staff, officials, third-parties, relatives), irrespective of the existence or nature of a contractual relationship with a sports organisation.

Restrictions and exceptions to the rights and obligations of any person in relation to reporting should be no more than necessary and, in any event, not be such as to defeat the objectives of this recommendation. These principles are without prejudice to the applicable rules, such as data protection legislation or the protection of legal and other professional privilege.

## **PART III. RIGHTS AND RESPONSIBILITIES OF WHISTLEBLOWERS**

States Parties are encouraged to take the necessary measures to ensure the following rights and responsibilities of whistleblowers are respected and enforced within the national framework. In particular, reporting channels need to be accessible. NADOs could play a central role in this context. The implementation of specific rights might be conditioned to the signature of a whistleblower agreement.

### **Article 1. Right to provide information**

Anyone has the right to the good-faith reporting of information that relates to an alleged anti-doping rule violation or non-compliance with the World Anti-Doping Code to an NADO, the World Anti-Doping Agency, law enforcement authorities, sports organisations, regulatory or professional disciplinary bodies, hearing bodies or any person conducting investigation on behalf of those entities.

### **Article 2. Right to confidentiality**

Whistleblowers are entitled to have the confidentiality of their identity and information provided maintained, subject to fair trial guarantees.

### **Article 3. Right to secured and reliable reporting channels**

Whistleblowers have the right to access an anonymous and confidential mechanism for good-faith reporting.

### **Article 4. Right to be informed on the status of proceedings and overall guidance**

Whistleblowers have the right to obtain information from relevant bodies regarding the processing of information or evidence provided by them and the status of ongoing investigations initiated in this regard, subject to restrictions of respective laws and regulations, or in light of not compromising ongoing investigations. They have the right to be provided guidance on rights and responsibilities to keep the integrity of the investigation process and

measures which might help to protect themselves and their families and associates, or any other advice in relation to the process.

#### **Article 5. Right to be notified of information sharing with third parties**

Whistleblowers have the right to be informed when the body, to which reporting has been made to, intends to share information or evidence made by the whistleblower with a third party.

#### **Article 6. Right to withdraw reporting or any disclosure**

Whistleblowers have the right to withdraw some or all evidences provided or information related to the reporting. In the interest of the administration of justice, the body to which the reporting has been made to, may continue to proceed with the investigation and reveal an anti-doping rule violation, or communicate information to law enforcement or judicial bodies for the prosecution of alleged committed criminal offense or any other violation of laws and regulations.

#### **Article 7. Right to assistance**

When conditions permit, whistleblowers may be provided with assistance, which can notably include legal, psychological, or physical support.

#### **Article 8. Right to protection from retaliation**

Whistleblowers who in good-faith have provided or intend to provide evidence or information that relates to an alleged anti-doping rule violation or non-compliance, have the right to be protected against retaliation, threatening or intimidation of any form, whether taken against them, their families or associates, directly or indirectly. Interim relief could be made available in cases where whistleblowers are retaliated against or subject to potential retaliation.

#### **Article 9. Responsibilities**

Whistleblowers shall:

- Make a report in good-faith and refrain from providing false information or falsified evidence;
- Continuously provide accurate information upon the request of the body, which reporting has been made to, subject to human rights (e.g. right to respect for private life) of the person being investigated;
- Refrain from taking any action or providing any information that might put them (including their families or associates) in danger;
- Seek approval from the body dealing with their report before taking any action or intervening in the investigation process;
- Maintain confidentiality.

These responsibilities may be implemented through the signature of an agreement.

### **PART IV. RESPONSIBILITIES FOR WHISTLEBLOWER PROTECTION**

#### **Article 10. Reporting channels**

States Parties shall ensure that confidential and secured reporting channels are available to whistleblowers to easily submit any information or ask any question regarding reporting procedures, whistleblower rights or any question related to anti-doping.

Channels both within the sport sector and/or outside sports (NADOs, WADA, law enforcement, or other external structures) should be available and interconnected.

National and international anti-doping frameworks should be designed and developed to facilitate reporting and protect whistleblowers.

### **Article 11. Regulations and whistleblower agreement**

States Parties should ensure that relevant law enforcement authorities and NADOs adopt internal regulations prescribing rules on the commencing of protection mechanisms, such as an agreement to be signed between the whistleblower and the report recipient, listing the rights and responsibilities of both the whistleblower and the report recipient. It should be mentioned that some rights and responsibilities can only become applicable once the agreement has been signed. The agreement should also detail how and on which grounds the relationship can be terminated.

### **Article 12. Report screening**

States Parties should ensure that relevant organisations take steps to verify the identity of the whistleblower, if she or he does not report anonymously, and corroborate all information provided. Where the information cannot be corroborated, organisations must be cautious in acting upon that information and/or sharing it with others.

A retaliation risk assessment should also be conducted to anticipate potential risks for the whistleblower, and act accordingly throughout the whistleblowing management process.

### **Article 13. Ensuring confidentiality and data protection**

States Parties should ensure that reporting channels provide protection, confidentiality and, where appropriate, anonymity of the whistleblower, at the time of the report and throughout the process.

If the whistleblower wishes or agrees to identify her or himself, the personal data protection should always be guaranteed.

Where appropriate, legal and legitimate restrictions to the right to data protection and confidentiality should apply.

Reports, and the information they contain, must only be kept for the period of time strictly necessary for their processing. Additionally, the information should be protected from evidential collection processes and the identity of the whistleblower anonymised before being shared with any third parties, on a strictly “need to know” basis.

Staff in charge of handling a whistleblower and their information should be specifically trained and informed about the importance of and methods to maintain whistleblowers’ confidentiality and security. They should comply with the duty of professional secrecy and confidentiality in the transmission of data within and outside their organisation.

Key steps and responsibilities in whistleblowing information management should be provided in internal regulation and be subject to a periodic review.

### **Article 14. Creating a Single Point of Contact (SPOC)**

States Parties should ensure that in all relevant law enforcement authorities or NADOs, a Single Point of Contact (SPOC) in charge of anti-doping investigation be nominated. The SPOC, which may consist of one or more persons, should be responsible for processing the data coming from whistleblowers, be responsible for direct communication with other organisations involved and ensure that the processing remains confidential, effective and limited to necessary and proportionate means.

### **Article 15. Protection against retaliation**

States Parties should ensure that reporting channels set up by NADOs and law enforcement authorities allow whistleblowers and any other source to provide information on actual or potential retaliation.

When information regarding retaliation behaviour arises, an assessment should be conducted, and if relevant, an investigation triggered by law enforcement authorities and/or the NADO.

Protection measures should, as much as possible, be applied to the whistleblower and their families and associates, where needed.

States Parties should also ensure that discouraging or retaliating against anyone who reports or intends to report doping be considered as an Anti-Doping Rule Violation by NADOs in accordance with the World Anti-Doping Code.

#### **Article 16. Communication, education and awareness-raising programmes**

States Parties should ensure that available reporting channels and whistleblower rights and responsibilities be made publicly available and promoted, at least on the website of the NADO.

States Parties should also ensure that appropriate communication and awareness-raising programmes are implemented to promote the information and trustworthiness of available reporting channels, whistleblower protection schemes and promote the positive contributions of whistleblowers.

#### **Article 17. Penalties and damages for entities or persons that disclose the identity of the whistleblower**

States Parties should ensure the effective sanctioning of persons and entities who by their conduct compromise the anonymity or confidentiality of whistleblowers.

Where appropriate, they should also ensure that sport disciplinary regulations and/or other legislation include provisions against the violation or compromising of whistleblower's confidentiality and safety, when such acts were avoidable. The sanction may be either disciplinary or financial and should be aggravated if the concerned person is the receiver of the report or the SPOC.

#### **Article 18. Communication with the whistleblower**

States Parties should ensure that a secured and confidential communication channel be established between the whistleblower and the recipient organisation, in order to provide follow-up and inform the whistleblower. The provision of information to the whistleblower should be carried out as thoroughly as possible and all possible information should be provided within a reasonable period of time, without jeopardising the investigation procedure.

#### **Article 19. Prohibiting bad faith/malicious reports**

Malicious reports should be prohibited and sanctioned. When malicious reports are suspected, the burden of proving the malicious nature of the report should fall on the organisation which collected the report. When relevant, malicious reports should be transferred to the competent NADO or international federation to initiate proceedings for a potential anti-doping rule violation related to "tampering" (Article 2.5 of the World Anti-Doping Code) or to law enforcement authorities.

### **PART V. COOPERATION AND REVIEW MECHANISM**

#### **Article 20. National coordination framework**

States Parties should ensure a coordination framework between relevant national organisations regarding the responsibilities for whistleblowers protection. In particular, the framework should clarify responsibilities with regard to the operation of reporting channels and implementation of awareness-raising and education programmes.

Within this framework, States Parties should encourage the NADOs and law enforcement authorities to set up a mechanism such as a Memorandum of Understanding, which clarifies which information can be exchanged and ensure that information sharing and actions among respective authorities take place via secured communication channels on a 'need to know' basis and in line with applicable data protection legislations.

**Article 21. International cooperation**

States Parties should adopt necessary legal basis allowing information sharing and data transmission, as well as co-operation with the other NADOs, WADA, International Testing Agency and other related international sporting organisations or institutions, as necessary.

**Article 22. Review**

States Parties should establish, within or outside the national framework, a mechanism to review the effectiveness of the framework with a number of criteria, including that every reporting made by whistleblower is properly evaluated and respective actions are taken in this regard without compromising the whistleblower confidentiality and protection. The review should also ensure that the rights of the whistleblower and of other parties concerned by the report, such as persons being investigated, are being respected at all times. The review could notably include the number of proceedings brought, the time taken to reach decisions, outcomes (cases won or lost by whistleblowers) and measures taken to punish retaliation.

All these elements should be made available to the Monitoring Group with the view to assess the implementation of the recommendation and to facilitate sharing of best practices among States Parties.

## EXPLANATORY NOTE

### National coordination framework

Stakeholders of the national coordination framework could include representatives of NADO(s), sports organisations, law enforcement, border security and customs authorities, food security agencies as well as any other supervisory authorities that might have an interest in anti-doping.

States Parties should ensure that stakeholders included in the national coordination framework occasionally meet to review the effectiveness of the framework and exchange practices and experiences in whistleblower management and protection.

### Reporting channels

Reporting channels should propose, as much as possible, several reporting options, for example email addresses, web platforms, mobile applications, phone lines, chat messenger systems, mail addresses or in person. The channels should be accessible by any person, whether contractually linked to sports organisations or not. Anonymous reporting should be offered.

The software used in the reporting channels must be adaptable and compatible with different operating systems and electronic devices. It must also allow the whistleblower to attach documents supporting the report, if needed. These channels should be user friendly, secured, must ensure confidentiality to receive and treat the information provided by the whistleblower about anti-doping rule violations or non-compliance. It and should allow the long-lasting storage of information to allow further investigations.

When appropriate reporting channels should be available in different languages, allowing access to whistleblowers of various nationalities, and clear information on the functioning of this reporting channel should be published for the end-users. Reporting channels should be interconnected, as much as possible for example with a reference to the NADO reporting channel on the websites of sports organisations.

The reporting channels shall acknowledge receipt of the report.

### Confidentiality, report screening and management process

Confidentiality should be offered throughout the process and could include anonymity. However, fair procedure requirements could lead to the disclosure of the identity, in predetermined circumstances.

When the identity of the whistleblower is provided, her or his identity should be verified, for example through recognised identity documents.

In order to protect the identity of the whistleblower and the effectiveness of the procedure, targeted controls or interviews based on a report should not be restricted to the person or persons mentioned in the report but could be made to a wider range of individuals.

National or international standards, including the International Organization for Standardization (ISO) standard No. 37002 on whistleblowing management systems could serve as basis to develop appropriate management process.

### Protection from retaliation

Forms of retaliation might include but are not limited to threatening the physical or mental well-being or economic interests of whistleblowers (including their families, intermediaries or associates), dismissal, suspensions, loss of opportunities, punitive transfers, and reductions in or deductions of wages, moral or sexual harassment or other punitive or discriminatory treatment.



Protection from such retaliation should not be lost solely on the basis that the whistleblower making the report was mistaken or that the anti-doping rule violation has not been confirmed or non-compliance has not occurred, provided that whistleblowers had reasonable grounds to believe in the accuracy of their report.

### **SPOC**

SPOCs should not have any conflict of interest in the cases handled. Conflicts of interest should be individually examined and, where there is a conflict of interest, the SPOC must ask for a withdrawal from the process.

### **Communication, education and awareness-raising programmes**

Whistleblower information, awareness-raising and education programmes should reach a wide audience, through a variety of means: e-learning modules, social media communication, face-to-face visits to clubs and sport schools, info desks at sport events (Outlook activities), written material, websites, sport leadership public interventions, etc. They shall target athletes from recreational to elite levels including children, athlete Support Personnel (staff, coaches, club officials, etc.), sport administrators and enlarged audiences such as teachers, university staff and students (particularly those in teacher training programs), chef de missions, training facility staff, board members, commercial sponsors, media personnel and any other person as deemed necessary.

The programme should at least promote the following content:

- What information it is necessary to report?
- Why it is important to speak up and promote whistleblowers?
- How the person can report/What reporting channels do exist?
- What rights and responsibilities do whistleblowers have?
- What types of protection can be provided to the whistleblowers?

At national level, the information, awareness-raising and education programmes should be coordinated and reviewed within the national framework mentioned in Article 20.

Sports organisations are encouraged to provide information on reporting channels in the competitions rules applicable to their events.

### **Protection of good-faith whistleblowers**

Although individuals are not afforded protection for deliberately-made false reports, protection is afforded to an individual who makes a report based upon the individual's reasonable belief that the reported information is true, even if the individual's belief is incorrect.

Malicious or bad-faith reports should be clearly defined and prohibited. In this context, effective, proportionate and dissuasive penalties should be in place for persons making false or malicious reports. They could include, but not limited to, compensations for persons who suffered damages from malicious reports.