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ANTI-DOPING CONVENTION

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Anti-Doping Convention (ETS 135)**

**EVALUATION REPORT OF THE MONITORING
GROUP (T-DO)**

Evaluation visit to the Netherlands
13-15 September 2021

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INTRODUCTION

In March 2021 the Government of the Netherlands invited the Monitoring Group of the Anti-Doping Convention of the Council of Europe (T-DO) to conduct an Evaluation visit, for the purpose of evaluating the measures taken by the Government of the Netherlands to comply with its commitments pursuant to the Anti-Doping Convention.

Pursuant to that invitation, and consistent with the Council of Europe's Compliance with Commitments in Sport project, the T-DO Secretariat of the Anti-Doping Convention of the Council of Europe (*'the Secretariat'*), together with the Chair of the Monitoring Group of the Anti-Doping Convention appointed an Evaluation Team (*'the Evaluation Team'*) to carry out an Evaluation Visit to the Netherlands (*'the Visit'*).

Prior to the Visit, the Ministry of Health, Welfare and Sport of the Government of the Netherlands provided the Secretariat with a National Report. A copy of this report is attached as Annex 1 to this Report (*'the National Report'*). The Visit took place in The Hague between 13 and 15 September, 2021. The program of the visit and the list of participants from the Government of the Netherlands, and other parties and institutions are attached at Annex 2. The full composition of the Evaluation Team is described at Annex 3.

This Report (*'the Evaluation Report'*) has been prepared with the aim of providing the Monitoring Group with a summary of the Evaluation Team's findings and analysis, together with a number of recommendations. The Evaluation Report is concerned solely with Articles 1-9 of the Convention. The Government of the Netherlands has also ratified the UNESCO International Convention against Doping in Sport. The measures taken to implement the UNESCO Convention overlap substantially with those taken to implement the Council of Europe Anti-Doping Convention, and where relevant are referred to in the Evaluation Report.

REFERENCES

The following references are used in this Report

Term	Meaning
<i>Convention</i>	The Council of Europe Anti-Doping Convention
<i>UNESCO Convention</i>	The International Convention Against Doping in Sport
<i>WADA</i>	World Anti-Doping Agency
<i>Code</i>	The World Anti-Doping Code together with the International Standards to the World Anti-Doping Code
<i>Standards</i>	The International Standards to the World Anti-Doping Code
<i>ISL</i>	International Standard for Laboratories
<i>National Federation</i>	A Governing body for a sport in the Netherlands
<i>NADO</i>	National Anti-Doping Organisation, as that term is used and defined in the Code
<i>Athlete</i>	To be construed and read as that term is used and defined in the Code, and not to be confused with the definition of “sportsmen and sportswomen” referred to in the Article 2 of the Convention
<i>Athlete Support Personnel</i>	To be construed and read as that term is used and defined in the Code
<i>Doping Control</i>	To be construed and read as that term is used and defined in the Code
<i>Anti-Doping Organisation</i>	To be construed and read as that term is used and defined in the Code
<i>Results Management</i>	To be construed and read as that term is used and defined in the Code
<i>Prohibited List</i>	The International Standard for the Prohibited List

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.

1. The Government of the Netherlands signed the Convention on 4 December 1990 and ratified the Convention on 11 April 1995¹.
2. The Government of the Netherlands has also signed and ratified the UNESCO Convention.
3. Article 1 of the Convention requires State Parties to the Convention to take measures to reduce and eliminate doping in sport, including by way of legislation.

Anti-Doping Legislation

4. The National Report² describes the historical background to the present legislative structure as regards anti-doping matters. On 1 January 2019, the Anti-Doping Policy Implementation Act came into effect in the Netherlands, which in turn established an independent governmental organisation, Doping Authority Netherlands. The Anti-Doping Policy Implementation Act established Doping Authority Netherlands as being the NADO for the Netherlands, and designated Doping Authority Netherlands with the responsibility for fulfilling the task assigned to National Anti-Doping Organisations by the Code³.
5. The Anti-Doping Policy Implementation Act also makes provision for cross-governmental standards to apply to Doping Authority Netherlands, and for the funding of Doping Authority Netherlands⁴.

Conclusions

6. The Evaluation Team considers that the Government of the Netherlands has complied with the political commitments described in Article 1 of the Convention.

¹ National Report, page 5

² National Report, page 5

³ Doping Authority Netherlands had existed and fulfilled the role of the National Anti-Doping Organisation in the Netherlands prior to 2019, for a number of years, albeit with a different legal status.

⁴ National Report, page 6

ARTICLE 2 - DEFINITION AND SCOPE OF THE CONVENTION

2.1 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.

2.2. 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.

1. Article 2.1 does not specify a particular commitment or expectation. Its relevance is that in substance it requires that the terms referred to at Article 2.1(a), (b) and (c) are used by State Parties in a manner consistent with the Convention.
2. Doping Authority Netherlands has established a set of anti-doping rules, being the ‘*National Doping Rules*’. The National Doping Rules are a unified system of anti-doping regulations that are intended to be adopted and applied by National Federations in the Netherlands. National Federations that do not adopt the National Doping Rules are required, nevertheless, to adopt anti-doping rules that comply with the Code and Standards. In relation to the specific terms identified in Article 2, the Evaluation Team understands that the National Doping Rules substantially comply with the Code and that they have been certified as being compliant with the Code. The National Doping Rules adopt and give effect to the current version of the Prohibited List at any given time.

Conclusions

3. The Evaluation Team accepts that the Government of the Netherlands has complied with the political commitments described in Article 2 of the Convention.

ARTICLE 3 - DOMESTIC CO-ORDINATION

3.1 The Parties shall co-ordinate the policies and actions of their government departments and other public agencies concerned with combating doping in sport.

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.

1. The Convention envisages that in order to achieve the practical implementation of the Convention, States Parties should establish a national responsible body, with an established and agreed jurisdiction in respect of individual sports, so as to ensure consistency across all sports at the national level. Likewise, the Code contemplates the establishing of a National Anti-Doping Organisation, or 'NADO', this being defined as an entity "(...) 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".
2. The National Report explains how the Government of the Netherlands has legislated in order to establish Doping Authority Netherlands, the National Anti-Doping Organisation for the Netherlands. Doping Authority Netherlands is examined in further detail below, as well as a number of other organisations that play a part in the overall anti-doping framework in the Netherlands.

Doping Authority Netherlands

3. Doping Authority Netherlands is the National Anti-Doping Organisation for the Netherlands. As noted in the comments made concerning Article 1 above, Doping Authority Netherlands has been established pursuant to the Anti-Doping Policy Implementation Act.
4. The legal structure applied to Doping Authority Netherlands ensures that it is in a position to process personal data in a manner that is fully compatible with national data protection legislation (which itself conforms to the provisions of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the European Union General Data Protection Regulation). It also ensures that Doping Authority Netherlands is accountable in respect of public authority governance standards established by the Government of the Netherlands.
5. Doping Authority Netherlands receives its funding in part from the Netherlands Olympic Committee-Netherlands Sports Federation, and part from the Ministry of Health, Welfare and Sport.
6. Doping Authority Netherlands is a Signatory to the Code, as confirmed by its entry in the relevant information published by WADA⁵.

Ministry of Health, Welfare and Sport

7. The Ministry of Health, Welfare and Sport is the principal governmental division with responsibility for legislative, regulatory and administrative matters concerning sports and sporting professions; for international relations with bodies and institutions that have competence in the field of sport,

⁵ See <https://www.wada-ama.org/en/code-signatories#GovernmentFundedOrganizations>

with particular regard to the Council of Europe, the European Union, , UNESCO and WADA; and for relationships with international sports organisations as well as other organisations operating in the sports sector.

8. The Ministry of Health, Welfare and Sport is responsible for the appointment of the Chairperson of Doping Authority Netherlands, and for ensuring that Doping Authority Netherlands complies with cross-governmental standards established by the Government of the Netherlands. The Chief Executive Officer of Doping Authority Netherlands is appointed pursuant to a public appointments process, in consultation with the Netherlands Olympic Committee-Netherlands Sports Federation.
9. The Ministry of Health, Welfare and Sport coordinates consultations between different governmental agencies as regards matters of relevance to anti-doping. This includes oversight in respect of funding agreements entered into between the Government of the Netherlands, the Netherlands Olympic Committee-Netherlands Sports Federation, and National Federations.

Netherlands Olympic Committee-Netherlands Sports Federation

10. The Netherlands Olympic Committee-Netherlands Sports Federation⁶ (commonly abbreviated and referred to as *NOC*NSF*) is the overall coordinating sports organisation in the Netherlands. It includes within its membership a significant number of National Federations (77), the majority of which have high performance and elite Athlete sport programmes. NOC*NSF also functions as the Netherlands National Olympic Committee and National Paralympic Committee.
11. NOC*NSF is funded primarily through the Netherlands National Lottery, and commercial sponsorship. The Ministry of Health, Welfare and Sport also provides discrete funding for individual projects and initiatives.
12. NOC*NSF is the principal funder of National Federations, pursuant to agreements entered into between NOC*NSF and National Federations. These agreements include a number of commitments on the part of National Federations in relation to anti-doping matters, including respecting and giving effect to the roles and responsibilities of Doping Authority Netherlands, the adoption of the National Doping Rules, and compliance with the Code.

Conclusions

13. The establishment of Doping Authority Netherlands and the integration of various state actors into the anti-doping framework within the Netherlands are consistent with the measures required by Article 3.1 of the Convention. The Evaluation Team accepts that the Government of the Netherlands complies with the commitments described in Article 3.

⁶ <https://www.nocnsf.nl/en>

ARTICLE 4 - MEASURES TO RESTRICT THE AVAILABILITY AND USE OF BANNED DOPING AGENTS AND METHODS

4.1 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.

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.

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;

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.

4.4 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.

Article 4.1

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.

1. Article 4.1 requires State Parties to adopt measures to restrict the availability, including trafficking, of banned substances and methods and, in particular, anabolic steroids, as well as the use in sport of banned doping agents and doping methods.
2. The Government of the Netherlands has adopted two broad measures that restrict the availability of banned substances in sport: sport specific regulations that apply to sport and sports persons, and general criminal measures that extend beyond sport.
3. These general measures are in respect of the illegal sale, supply and distribution of drugs, narcotics, and pharmaceutical products.

National Doping Rules

4. The National Doping Rules are the primary anti-doping regulatory rules that are intended to apply to sports persons and sports organisations in the Netherlands. They are prepared by Doping Authority Netherlands and applied by National Federations as part of their individual sport governance and disciplinary regulations.
5. National Federations are required to ensure that their policies, rules, and programmes are in full compliance with the provisions of the National Doping Rules and that all Athletes and Athlete Support Personnel within their jurisdiction recognise and implement their obligations as defined in the National Doping Rules. The National Doping Rules give effect to the most recent iteration of the Prohibited List.
6. National Federations that do not formally adopt the National Doping Rules (because, for example, they adopt the anti-doping rules of their International Federation) have a binding obligation to ensure that their anti-doping rules comply with the Code and give full effect to the operational role of Doping Authority Netherlands. These obligations are encapsulated within the funding agreements that exists as between National Federations, NOC*NSF and/or public bodies.
7. There is no legal obligation for a National Federation to comply with the Code; however, any such National Federation will be precluded from receiving public funding.

General Criminal Measures

8. The Evaluation Team noted that several different pieces of legislation are in effect in the Netherlands which contribute to the restriction of sale and supply of Prohibited Substances. These are referred to in the National Report and include the Medicines Act, the Commodities Act, the Opium Act, and the Customs Act⁷.
9. Each of these Acts target the unlawful sale, supply and distribution of medicines and related products, and restricted drugs, and in doing so restrict the availability of doping substances. However, none of the Acts specifically mentions Prohibited Substances or Methods. The Evaluation Team was advised during the course of the Visit that the relevant agencies tasked with enforcing the various Acts do not consider that any meaningful gaps exist between the various classes of substances restricted by the Acts and the Prohibited List.
10. The Evaluation Team was advised that a degree of cooperation exists as between law enforcement agencies, customs, the Health and Youth Care Inspectorate and the Food and Consumer Product Safety agencies in restricting the availability and the use in sport of banned doping agents and doping methods.
11. This cooperation extends to both the Ministry of Health, Welfare and Sport and Doping Authority Netherlands, which meet with the agencies referred to on a regular basis to exchange information

⁷ National Report, page 9

and experiences as regards doping substances, and enforcement action taken in relation to matters involving doping substances.

12. State authorities are, however, restricted to an extent from sharing information with organisations such as Doping Authority Netherlands, in particular information that relates to active criminal investigations and prosecutions.
13. The Ministry of Health, Welfare and Sport is examining whether the current legislative framework establishes a lawful pathway for the sharing of such information with organisations that are not directly involved in the process of criminal investigation and prosecutions, and if so, how that pathway can be developed in order to facilitate the lawful exchange of information that is useful in relation to anti-doping operational matters.

Article 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.

14. As a form of encouragement to sport organisations to fight doping, Article 4.2 of the Convention requires the States or the relevant non-governmental organisations to make it a criterion for the grant of public subsidies to sports organisations that they effectively apply anti-doping regulations. As noted above, the Evaluation Team was advised that agreements as between NOC*NSF and National Federations require that National Federations comply with the National Doping Rules and, by extension, the Code.
15. A failure to comply with this commitment will result in a National Federation losing access to funding provided by NOC*NSF. The Evaluation Team was advised that NOC*NSF monitors whether or not a National Federation has either (a) adopted the National Doping Rules or (b) adopted Code compliant anti-doping rules.

Article 4.3(a)

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;

16. Pursuant to this Article of the Convention, Governments may underwrite the entire cost of Doping Controls and analysis or offer partial grants to the sport organisations, as a form of encouragement to undertake testing on a worthwhile scale.
17. The Evaluation Team was advised that (as referred to above in this Report) funding for Doping Authority Netherlands is provided by two primary funders, being the Ministry of Health, Welfare and Sport, and NOC*NSF. The funding split between the two agencies is approximately two-thirds provided by the Ministry of Health, Welfare and Sport, and one-third provided by NOC*NSF. The main reason for the weighted split is that the legal status of Doping Authority Netherlands is such

that it is required to comply with a number of cross-governmental standards, which involve a degree of extra cost.

18. In general terms, the funding provided by the Ministry of Health, Welfare and Sport is in respect of the running costs of Doping Authority Netherlands. This funding is dynamic and can be adjusted in response to unanticipated or unforeseen requirements. The Ministry of Health, Welfare and Sport meets with Doping Authority Netherlands on a quarterly basis as part of its financial oversight responsibility.
19. NOC*NSF receives its funding from the Netherlands National Lottery. In practice the funding received from NOC*NSF is utilised by Doping Authority Netherlands in respect of core operational activities, including Doping Controls, Results Management, and educational work. The current funding commitment from NOC*NSF is in place until 2023.

Article 4.3(b)

Furthermore, the Parties shall:

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;

20. The National Anti-Doping Rules provide for, in the context of a doping violation, the full or partial withdrawal of sport-related financial support, reimbursements or other benefits provided by a National Federation. In general, this withdrawal will be brought into effect automatically, subject to any particular factors associated with the relevant violation (such as the imposition of a reduced sanction, the particular substance if the violation concerns the use of such a substance, and individual circumstances.)
21. The Evaluation Team was advised that National Federations enter into contractual arrangements with elite-level Athletes which include conditions to the effect that the relevant contract (and thereby any funding provided pursuant to the contract) may be terminated if the Athlete fails to comply with anti-doping rules and standards. A sample contract was provided to the Evaluation Team in this regard.

Article 4.3(c)

Furthermore, the Parties shall:

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;

22. The evaluation of this Article is typically undertaken by reference to the measures in place in relation to the obtaining of biological samples from Athletes (in order that those samples may be analysed at an appropriately accredited laboratory) referred to generally as 'Testing'. In this regard, one of the key issues is the jurisdiction to which Athletes are subject, and in particular whether that jurisdiction means that Athletes are required to participate in Testing.

23. The National Doping Regulations establish the Testing jurisdiction for Doping Authority Netherlands. They provide that Athletes may be required to provide a sample at any time and at any place by Doping Authority Netherlands or any other Anti-Doping Organisation with testing authority over them.
24. As noted above, National Federations are required to adopt the National Doping Regulations as part of their own governance.
25. Doping Authority Netherlands does not have jurisdiction to test any Athlete who is not subject to the National Doping Regulations. This means, for example, that an overseas Athlete who is training or competing in the Netherlands can be tested by that Athlete's NADO, the Athlete's International Federation, but not necessarily Doping Authority Netherlands. The Evaluation Team noted that this has the potential to reduce response times in situations that may require Testing to be undertaken at short notice, and also appears to be at odds with the Code⁸.

Article 4.3(d)

Furthermore, the Parties shall:

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.

26. Doping Authority Netherlands has signed a number of cooperation agreements with International Federations and other NADOs to develop a smart testing distribution plan in relation to Athletes living or competing outside of the Netherlands.

Article 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.

27. Measures giving effect to this Article are provided for in the National Doping Regulations, in that Doping Authority Netherlands is delegated the responsibility of undertaking Doping Controls. As noted above, National Federations are required to adopt anti-doping rules that provide for the Testing authority of Doping Authority Netherlands.

Recommendations

28. As regards Article 4(1) the Evaluation Team recommends that an analysis be conducted in relation to the products, substances and methods regulated by the Acts referred to in the National Report, and the Prohibited List, to ensure that no flaws are present that might otherwise overlook the trafficking of doping substances that are included in the Prohibited List.
29. The Evaluation Team notes that the Government of the Netherlands plans to review the extent to which public authorities engaged in the investigation and prosecution of criminal offences can

⁸ See Article 5.2.1, Code

lawfully share information relating to such investigations with bodies that are not involved in the criminal investigation process. This could expand the basis upon which information held by law enforcement bodies that is relevant to the commission of anti-doping rule violations might be shared more readily with non-law enforcement anti-doping authorities, including Doping Authority Netherlands, and WADA. The Evaluation Team kindly requests that the Government of the Netherlands advise the Monitoring Group as to any developments in its public authority information sharing practices that emerge from this review.

30. The Evaluation Team recommends that if the conclusions of the review are such that the current framework applied to information-sharing, based upon current regulations and bilateral agreements between parties that wish to share information, might be improved by the development of additional or expanded regulation, that this be undertaken.
31. The Evaluation Team notes that *Recommendation Rec (2016) 1 of the Monitoring Group on Information Sharing between Public Agencies and Anti-Doping Organisations in the Fight against Doping* may be of assistance in relation to the planned review.
32. As regards Article 4(3)(a), the Evaluation Team noted the view of NOC*NSF that the fact that its funding underpins the operational activities of Doping Authority Netherlands does not constitute any *de facto* conflict. The Evaluation Team nevertheless recommends that there should be some formal commitment on the part of NOC*NSF that it will not seek, via its funding provision, to influence the test distribution planning undertaken by Doping Authority Netherlands; and that there should be a general commitment to provide Doping Authority Netherlands with sufficient funds to carry out its operational tasks efficiently.
33. As regards Article 4(3)(c), the Evaluation Team accepts that as long as a National Federation has adopted the National Doping Regulations, Doping Authority Netherlands can test any Athlete who falls within the jurisdiction of that National Federation.
34. An obvious issue arises if a National Federation fails to adopt the National Doping Regulations. The Evaluation Team was advised that in practice National Federations routinely adopt the National Doping Regulations, and that this issue is not a practical concern. The Evaluation Team was only partly reassured by this. It appears to the Evaluation Team that there is an inescapable risk that a National Federation might fail to adopt the National Doping Regulations through, for example, through some administrative oversight, or the timing of adoption might be delayed for operational, staffing, or other *ad hoc* reasons. That would create a gap in the Testing jurisdiction of Anti-Doping Netherlands that might not become apparent for some time.
35. The Evaluation Team understands that this is a consequence of the implementation model adopted by the Government of the Netherlands. The Evaluation Team refers to this model further in relation to its remarks concerning Article 7, but notes that it is in essence a two-step model, involving (a) the promulgation of the National Doping Regulations and (b) the adoption of the National Doping Regulations by a National Federation. If (b) does not happen, then (a) becomes of reduced value. The model has an intrinsic weakness in that it requires an intervention from a National Federation and there are circumstances in which it may not become apparent for some

time if a National Federation has made an error or committed some oversight in its adoption of the National Doping Regulations.

36. This is a risk that the Government of the Netherlands will manage in the most appropriate manner. The Evaluation Team suggests that the Testing jurisdiction of Doping Authority Netherlands be examined as part of whatever risk management strategy is adopted by the Government of the Netherlands to ensure that a deficient adoption of the National Doping Regulations by a National Federation does not undermine the Testing jurisdiction of Doping Authority Netherlands.

Conclusions

37. The establishment of Doping Authority Netherlands and the adoption of the National Doping Regulations Rules is a key component as regards Article 4.1. The Evaluation Team therefore accepts that the Government of the Netherlands complies with the commitments described in Article 4.

ARTICLE 5 – LABORATORIES

5.1 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.

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.

1. Article 5 of the Convention establishes a number of commitments concerning laboratories. The important role of doping control laboratories in the fight against doping is reflected in the Convention, as well as in the Code and the UNESCO Convention.
2. It is of fundamental importance that the analysis of biological samples provided by Athletes is undertaken in a consistent and harmonised manner, so that the same standards are applied to all Athletes, regardless of nationality, sport, or location. Since 2004, WADA is responsible for accrediting and re-accrediting anti-doping laboratories, thereby ensuring that they maintain the highest quality standards, according to the provisions of the International Standard for Laboratories. The Code requires that biological samples provided by Athletes are analysed 'only in WADA-accredited laboratories or laboratories otherwise approved by WADA'.
3. There is no WADA-accredited laboratory in the territory of the Netherlands. The Evaluation Team was advised by Doping Authority Netherlands that the biological samples collected by it pursuant to its test distribution plan are analysed exclusively by a WADA-accredited laboratory. Doping Authority Netherlands has, the Evaluation Team was advised, strong working relationships with both the Ghent and Cologne laboratories, both of which are geographically close to the Netherlands.
4. The Evaluation Team also took note of the fact that Doping Authority Netherlands is provided with a line item in its budget concerning research and is engaged in collaborative research with the WADA-accredited laboratory in Cologne. Doping Authority Netherlands officials have published and/or contributed to the publication of a number of papers concerning doping issues⁹.

⁹ See National Report, Appendix

Conclusions

5. The Evaluation Team accepts that the Government of the Netherlands complies with the commitments described in Article 5.

ARTICLE 6 – EDUCATION

6.1 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.

6.2 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.

1. The Convention acknowledges the importance of education and information for the prevention of doping in sport and anticipates State Parties and sport organisations cooperating in that respect. It is generally agreed that educational and informational programmes should be comprehensive and be directed mainly to Athletes and Athlete Support Personnel. Apart from the Convention, the importance of education for the fight against doping in sport is reflected in the UNESCO Convention, the Code, and the recently adopted International Standard for Education.
2. The Monitoring Group has developed *Model Guidelines for Core Information/Education Programmes to prevent Doping in Sport*, annexed to the *Recommendation Rec (2011) 1 of the Monitoring Group on the use of the model guidelines for core information/education programmes to prevent doping in sport*. The Monitoring Group has also developed the *Guidelines for anti-doping education for Tertiary Education Institutions*, aiming to support the development, implementation, delivery, and evaluation of effective anti-doping education at the university level. These Model Guidelines are annexed to the *Recommendation Rec (2016) 2 of the Monitoring Group on the Guidelines for anti-doping education*.
3. The Evaluation Team was advised that the primary responsibility of Doping Authority Netherlands in relation to education matters is to develop and create education programs, resources, and content. The core target groups for this content are elite-level Athletes; support personnel, including coaches and trainers; parents and close support; and medical support staff.
4. The communication of educational content to Athletes is conducted in a number of ways, including by provision of direct training and consultation with Athletes, and in collaboration with National Federations. One example of direct education is the provision of anti-doping training to elite-level Athletes studying at elite sport colleges across the Netherlands.
5. The content developed by the Doping Authority Netherlands is implemented by the majority of National Federations that are members of NOC*NSF. Doping Authority Netherlands routinely reviews the extent to which education content is being communicated to Athletes by National Federations, in consultation with NOC*NSF. It is encompassed within the overall Elite Sports Education Plan developed by Doping Authority Netherlands.

6. Doping Authority Netherlands has made a significant contribution to international anti-doping practice by its development and maintenance of the Anti-Doping Knowledge Center, an online resource that includes legal decisions relating to anti-doping matters, scientific publications, education materials and research documents.
7. Outside of elite-level sport Doping Authority Netherlands provides access to educational resources to persons who participate in sporting activities at an amateur and recreational level.

Conclusions

8. The Evaluation Team accepts that the Government of the Netherlands complies with the commitments described in Article 6.

ARTICLE 7 – CO-OPERATION WITH SPORTS ORGANISATIONS

7.1 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.

7.2 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.

7.3 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.

1. Article 7 establishes a number of commitments on the part of States Parties aimed at ensuring that sports organisations take all appropriate steps to implement effective anti-doping programmes. These commitments include matters relating to what is referred to in the Code as the ‘Results

Management' process, that is, the process of investigating and prosecuting anti-doping rule violations.

Article 7.2(a)-(c)

States Parties 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;*

2. The Government of the Netherlands has complied with these commitments by adopting measures designed to ensure that sports organisations adopt and implement the standards mandated by the Code. This is in turn achieved via the National Doping Rules. The National Doping Rules are prepared by Doping Authority Netherlands and are subject to compliance oversight on the part of WADA.
3. The National Doping Rules do not operate by way of direct effect. Rather, they operate by being adopted and incorporated into the governance of individual National Federations, these National Federations being members of NOC*NSF.
4. The National Doping Rules apply to sportspersons in the Netherlands who are subject to the jurisdiction of a National Federation that has adopted the National Doping Rules.
5. The National Doping Rules incorporate the Prohibited List as updated each year by WADA, which effectively binds sports organisations to the Prohibited List (as envisaged by Article 7.2 (b)).
6. International harmonisation in respect of anti-doping rules is, therefore, realised by the National Doping Rules being compliant with the Code and incorporating the most up-to-date version of the Prohibited List.
7. It is not, however, mandatory for National Federations to adopt the National Doping Rules. If a National Federation does not adopt the National Doping Rules it must, as an alternative, have in place anti-doping rules that are substantially the same in substance as the National Doping Rules, that is, comply with the Code and give effect to the role of Doping Authority Netherlands.
8. In relation to Article 7.2(c), the National Doping Rules require that testing must be conducted in conformity with the provisions of the International Standard for Testing and Investigations.

Article 7.2(d)

States parties shall harmonise 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;*

9. This Article requires States Parties to put in place regulations about their disciplinary and appeal procedures that respect the concept of natural justice and due process. In this regard, the Monitoring Group of the Anti-Doping Convention has adopted a key recommendation concerning hearing panels and dispute resolution (the Recommendation on ensuring the independence of hearing panels (bodies) and promoting fair trial in anti-doping cases) (T-DO/Rec(2017)01).
10. The National Doping Rules make provision for dispute resolution, although it appeared to the Evaluation Team that, in effect, each National Federation was required to establish a means of dispute resolution in respect of anti-doping rule violations committed by sportspersons under their jurisdiction.
11. The Evaluation Team was advised that the majority (sixty-seven) of National Federations delegate the dispute resolution process as it relates to anti-doping rule violations to the Institute for Sports Jurisprudence ('ISR'). The ISR is an independent third party body providing a dispute resolution service (by way of contract) to National Federations. The Evaluation Team was provided with information in respect of how arbitrators are recruited and appointed by the ISR, and the policies and processes used by the ISR.
12. The Evaluation Team was not in a position to evaluate the dispute resolution processes adopted by the small number of National Federations that do not refer their anti-doping disputes to the ISR.
13. In general terms the process of asserting and prosecuting an anti-doping rule violation involves Doping Authority Netherlands at the investigation and prosecution stage, with ISR acting as the adjudicating body. Hearings are by default non-private although they can be closed hearings if there is a pressing reason for such a restriction.
14. Appeals involving National-Level Athletes are heard before the Appeals Committee established by Doping Authority Netherlands. The Chairperson of Doping Authority Netherlands is required by the relevant public administrative provisions to appoint the members of the Appeal Committee.
15. Decisions made in relation to anti-doping rule violation matters are published without reference to the relevant sportsperson's personal data, in accordance with the General Data Protection Regulation provisions concerning the necessity and proportionality of publication of such data.
16. The Evaluation Team was advised that Athletes who require specialist assistance in relation to anti-doping disciplinary proceedings but are not in a position to fund the provision of that assistance

have access to a form of 'legal aid'. This is designed to ensure that there is access to affordable legal support, and overall equality of arms in terms of the level of representation.

Article 7.2(e)

States Parties shall harmonise 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

17. The involvement of Athlete Support Persons in doping of Athletes is not uncommon. The Convention requires State Parties to provide for the imposition of effective penalties against those who are associated with doping infringements (including veterinary doctors). In this regard, the National Doping Rules apply to 'Athlete Support Personnel', this term incorporating the Code Definition applicable to such persons.

18. The National Doping Rules include provision for the imposition of Code-mandated disciplinary sanctions upon the Athlete Support Personnel if they are found to have committed an Anti-Doping Rule Violation. As noted elsewhere in this Report, National Federations are required to either adopt the National Doping Rules, or Code compliant anti-doping rules.

Article 7.2(f)

States Parties shall harmonise procedures for the mutual recognition of suspensions and other penalties imposed by other sports organisations in the same or other countries.

19. This Article is intended to ensure consistency between sports and between nations; and those penalties are not disregarded by those penalised seeking alternative jurisdictions within which to compete¹⁰. In this regard, mutual recognition of sanctions is one of the principles of the World Anti-Doping Code.

20. The National Doping Rules give effect to this principle. As noted elsewhere in this Report, National Federations are required to either adopt the National Doping Rules, or Code compliant anti-doping rules.

Article 7.3

The Parties shall encourage their sports organisations 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;

21. This requires State Parties to ensure their sports organisations organise doping control testing and sets certain elements of the testing programmes: on an effective scale, in-, and out-of-competition, and without advance notice. Testing must be 'equitable for all sportsmen and sportswomen'. For this to be achieved, it is important for the organisation responsible for testing and those persons involved, to be independent, impartial, and free from any conflicts of interest.

¹⁰ Explanatory Report Report to the Anti-Doping Convention, Strasbourg, 16.XI.1989, paragraph 71

22. This is provided for in the National Doping Rules. Doping Authority Netherlands is responsible for test planning and is regulated by WADA in this regard.
23. The National Report includes statistical data regarding the numbers of tests conducted by Doping Authority Netherlands between 2018 and 2020¹¹. Doping Authority Netherlands advised the Evaluation Team that it operates a 'smart' testing programme based on risk assessment. Doping Authority Netherlands currently utilises fourteen (14) Doping Control Officers, eight (8) of whom are also qualified Blood Control Officers. Doping Authority Netherlands plans to expand this number to twenty-five (25).
24. As noted above the Testing jurisdiction of Doping Authority Netherlands derives from the anti-doping rules adopted and implemented by National Federations. Doping Authority Netherlands has no standalone jurisdiction provided by, for example, regulatory instrument.
25. The Evaluation Team was concerned that this might result in unintended consequences in terms of jurisdiction 'holes' that might appear when National Federations revise or update their anti-doping rules.

Article 7.3(b)

The Parties shall encourage their sports organisations 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;

26. This Article requires State Parties to ensure their sports organisations establish agreements (as necessary) with other organisations for testing their Athletes when training in other countries.
27. The Evaluation team is aware that Doping Authority Netherlands has developed mechanisms and undertakes testing of Athletes when training out of the country through other NADOs or private testing companies worldwide.
28. In addition, Doping Control Netherlands collaborates with its partner NADO in Norway as regards the biological passport programme, and the Ghent laboratory as regards the steroidal passport programme.

Article 7.3(c)

The Parties shall encourage their sports organisations to clarify and harmonise regulations on eligibility to take part in sports events which will include anti-doping criteria;

29. This Article requires State Parties to ensure their sports organisations pay close attention to the fact that out-of-competition testing, and in particular testing in the lead up of major sport events, is one of the most important elements of a comprehensive testing programme. If Athletes are aware of the possibility to be tested when they are preparing for competitions, out-of-competition testing has a strong deterrent effect.

¹¹ National Report, page 13

30. At the international level, major event organisations (like, for example, the International Olympic Committee and International Paralympic Committee) and international federations encourage National Anti-Doping Organisations to test their Athletes prior to their participation in international events.
31. Similarly, at the national level, National Anti-Doping Organisations will generally test the Athletes under its jurisdiction prior to their participation in national events, based on a risk assessment analysis and with the support of the interested national sport organisation.
32. The Evaluation Team was not in a position to examine in any depth the specifics of this testing with Doping Authority Netherlands.

Article 7.3(d)

The Parties shall encourage their sports organisations to promote active participation by sportsmen and sportswomen themselves in the anti-doping work of international sports organisations;

33. This Article requires State Parties to ensure their sports organisations involve clean athletes in their anti-doping programmes, encouraging integrity and fairness for sport and athletes.
34. The Evaluation Team is aware that Doping Authority Netherlands involves Athletes in its education and outreach work as a matter of course. The National Report refers to the participation of elite-level Athletes as ‘ambassadors’ for Doping Authority Netherlands in this regard¹².
35. The Evaluation Team was advised during the Visit that Athletes are involved closely in anti-doping outreach efforts. The Evaluation Team received a positive endorsement of this work from an active Athlete who characterised the engagement between Doping Authority Netherlands and Athletes as being uniquely productive.

Article 7.3(e)

The Parties shall encourage their sports organisations 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;

36. This Article requires State Parties to ensure their sports organisations make full and efficient use of the analytical capacities of the laboratories. The analysis of samples for the purpose of anti-doping testing by the WADA-accredited laboratories is constantly evolving with strengthening of the existing analytical methods, as well as the development and implementation of new and more sophisticated methodologies.
37. In accordance with the Code, Anti-Doping Organisations may store samples for up to ten years for re-analysis at a later stage using improved analytical techniques developed in the meantime. Long term storage and reanalysis of samples has proved to be very effective on uncovering doped athletes and has a strong deterrent effect.

¹² National Report, page 13

38. The Evaluation Team was made aware that Doping Authority Netherlands has a long-term storage and analysis policy, which is based on factors such as the doping risks associated with a particular sport.

Article 7.3(f)

The Parties shall encourage their sports organisations to study scientific training methods and to devise guidelines to protect sportsmen and sportswomen of all ages appropriate for each sport.

39. This Article requires State Parties to ensure their sports organisations furnish Athletes with scientifically prepared guidelines to support their training and protect them from unnecessary harm, and also to prevent them from doping. It is a further reflection of the concern expressed in Article 6.2 of the Convention, namely that Athletes need to be provided with scientifically prepared guidelines to support their training and protect them from unnecessary harm, and also to prevent them from doping.

40. Doping Authority Netherlands and NOC*NSF collaborate closely in relation to education efforts, which the Evaluation Team was satisfied encompass the issues contemplated by Article 7.3(f).

Recommendations

41. National Doping Rules

41.1. The Evaluation Team notes that there is a broad range of measures available to States Parties when it comes to ensuring that sports organisations comply with the Code. The model adopted by the Government of the Netherlands is, in effect, to require sports organisations to adopt Code-compliant anti-doping rules as a *quid pro quo* for the receipt of public funding and/or benefits. This is not a model that is unique to the Netherlands.

41.2. An alternative model is for a legislative instrument to be promulgated that stands as a single anti-doping instrument that applies to sports organisations and sportspersons within a specific territory: this model is used by a number of States Parties.

41.3. The Evaluation Team believes that the ‘single instrument’ model, whilst not without some challenges, has a number of advantages as compared to the ‘adoption’ model. The Evaluation Team recommends that the Government of the Netherlands examines this model when it next revises its anti-doping legislation.

42. Anti-doping rule violation proceedings

42.1. The Evaluation Team believes that in respect of the key aspects of national-level anti-doping rule violation proceedings, these being investigation, prosecution and adjudication, the ideal structure is that there is a straightforward process involving just the NADO and a dispute resolution body. The simplest and most efficient model is for a NADO to investigate and prosecute anti-doping disciplinary proceedings, with an impartial dispute resolution body

being tasked with deciding if a violation has been committed and/or the appropriate sanction to be imposed in relation to a violation.

42.2. The Evaluation Team notes that Doping Authority Netherlands in practice conducts much of the investigation and prosecution activity in relation to national-level anti-doping rule violation matters, and the ISR operates as the adjudication body. This, however, appears to be a practical model rather than being based on the specific regulatory framework, which provides, in theory, that individual National Federations should prosecute the disciplinary process.

42.3. The Evaluation Team does not believe that the operative structure for anti-doping rule violation proceedings is inconsistent with the Convention, but equally does not believe that it is the ideal model. The Evaluation Team therefore recommends that the Government of the Netherlands reviews this structure when it next revises its anti-doping legislation with a view to establishing Doping Authority Netherlands as the single investigatory and prosecutorial body for anti-doping rule violation proceedings, and for there to be a dedicated dispute resolution body mandated and empowered by the National Doping Rules.

42.4. In addition, the Evaluation Team recommends that the connection between Doping Authority Netherlands and the appointment of appeal body members be severed, subject to the relevant public administration processes that give rise to this appointment being reviewed by the Government of the Netherlands.

43. Doping Authority Netherlands Jurisdiction

43.1. For the reasons noted above, the Evaluation Team recommends that the Testing jurisdiction of Doping Authority Netherlands be extended to any Athlete living, training, or competing in the Netherlands.

Conclusions

44. The Evaluation Team accepts that the Government of the Netherlands complies with the commitments described in Article 7.

ARTICLE 8 - INTERNATIONAL CO-OPERATION

8.1 The Parties shall co-operate closely on the matters covered by this Convention and shall encourage similar co-operation amongst their sports organisations.

8.2 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.

8.3 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.

1. Articles 8.1 and 8.2.c of the Convention emphasise the importance of coordination and cooperation among states parties to the Convention at the international level. A main channel for such cooperation is the Monitoring Group of the Anti-Doping Convention (T-DO) set up by virtue of Article 10 of the Convention as well as the Advisory Groups and the ad hoc groups of experts established by virtue of Article 11.2 of the Convention, to support the work of the Monitoring Group. Another important channel of cooperation under the Council of Europe is the Ad hoc European Committee for the World Anti-Doping Agency (CAHAMA), which is responsible for the coordination of the positions of all States Parties to the European Cultural Convention, with regard to questions and policy relating to WADA, WADA policies and WADA's operational activities.
2. The Evaluation Team was made aware by the Secretariat that the Government of the Netherlands and/or Doping Authority Netherlands attends and/or is consistently represented at the meetings of the T-DO as well as the meetings of CAHAMA. Doping Authority Netherlands has been an active participant in the four Advisory Groups to the Monitoring Group for several years, and a valuable contributor to a number of ad hoc initiatives. At an operational level, the Evaluation Team was made aware that Doping Authority Netherlands collaborates with many Anti-Doping Organisations.
3. Outside the structures of the Council of Europe, the Ministry of Health, Welfare and Sport cooperation collaborates extensively with WADA, UNESCO, and the Conference of Parties to the UNESCO Convention.
4. Article 8.2.a refers to a regulation adopted by many international sports organisations whereby performance records will be ratified only if the relevant participant can demonstrate a clean performance through a negative Doping Control. As it is clarified in the Explanatory Report to the Anti-Doping Convention:¹³

¹³ Explanatory Report to the Anti-Doping Convention, Strasbourg, 16.XI.1989, paragraph 78.

“(...) The drafters discussed the desirability of obliging national record claims to be subject to a similar requirement, but the practical difficulties of having a doping control team at every event, in every sport at which a national record might be claimed would be too great. In some countries where the emphasis is on out-of-competition controls, it would also be retrograde. However, the drafters considered that it was important that this explanatory report should mention the desirability of having such a condition, where practical, for national records, at least in high profile sports or events.”

5. The Evaluation Team was not provided with any information in this regard but believes that this Article is given practical effect in the Netherlands.

Conclusions

6. The Evaluation Team accepts that the Government of the Netherlands complies with the commitments described in Article 8.

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.

1. The Convention requires States Parties to exchange information and experiences between Parties and observers about issues related to the implementation of the Convention. The meetings of the Monitoring Group of the Convention serve as a suitable occasion for providing and exchanging such information.
2. The Government of the Netherlands regularly replies to the annual questionnaire sent by the Monitoring Group providing information about the implementation of the Convention; and also completes the on-line questionnaire (Anti-Doping Logic) issued by UNESCO on a bi-annual basis to assess compliance with the obligations set forth in the International Convention against Doping in Sport of UNESCO.

Conclusions

3. The Evaluation Team accepts that the Government of the Netherlands complies with the commitments described in Article 9.

ANNEX 1 – NATIONAL REPORT OF THE NETHERLANDS



MEASURES TAKEN IN THE NETHERLANDS IN THE CONTEXT OF THE ANTI-DOPING CONVENTION OF THE COUNCIL OF EUROPE

A self-evaluation report providing an outline of the application and implementation of the Convention, in preparation of the Monitoring Visit to the Netherlands on 13-14 September 2021

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Colofon

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Introduction

This self-evaluation was written in preparation of a Council of Europe monitoring visit that the Government of the Netherlands has invited in March 2021. For various reasons this invitation is very timely. First of all, the last visit was in 2004 when the World Anti-Doping Programme (WADP) was still in its early stages. Much has changed since that time in this field, not only in various sports but also on a global scale. Secondly, on a national level the implementation of the Anti-Doping Policy Implementation Act per 1 January 2019 changed the organisational structure of our National Anti-Doping Organisation (NADO), making it a hybrid form of organisation with elements of both non-governmental organisations and public sector bodies. The exact details of this legislation will be presented in this report. The Anti-Doping Policy Implementation Act will be evaluated in 2022, and the findings and opinions of the experts of the Council of Europe will contribute to this process. Finally, we believe in periodical evaluation, and that external advice will always help in bringing out the best. We warmly welcome the experts from the Council of Europe to our country, and are looking forward to this monitoring visit.

Evaluation

This self-evaluation will discuss the Dutch efforts to implement our obligations under the first nine articles of the Anti-Doping Convention (CETS No. 135) (the remaining articles of the convention are deemed to be more technical and do not involve national anti-doping efforts). This report will go article by article, and under article 1 will also include a description the Netherlands' anti-doping structure, its primary stakeholders and legal basis.

1 Aim of the Convention

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 Netherlands signed the Council of Europe Anti-Doping Convention on 4 December 1990, followed by ratification on 11 April 1995, and thus became a Party to the Convention.

In the Netherlands anti-doping efforts are primarily undertaken by three organisations: the Netherlands Olympic Committee – Netherlands Sports Federation (NOC*NSF), Doping Authority Netherlands, and the Ministry of Health, Welfare and Sport. The first anti-doping efforts in our country predate the signing and ratification of the Convention. In 1989 a specialist foundation, the Netherlands Centre for Doping Matters (NeCeDo), was formed by several sports organisations to be an independent advisor to sport and government on matters concerning doping. In 1999, the NOC*NSF General Assembly voted unanimously to centralise doping controls into one separate organisation. Later that year, with the support of the Ministry, Doping Controls Netherlands (DoCoNed) was set up. The work of these two foundations was very closely related. Due to this fact, and partly also because of the recommendations of the previous evaluation visit by the Council of Europe, the two organisations merged in 2006, forming a new private foundation: Anti-Doping Authority Netherlands (ADAN).

The first World Anti-Doping Code was officially adopted by both Anti-Doping Authority Netherlands and NOC*NSF in 2003. The Kingdom of the Netherlands was among the first countries to ratify the UNESCO Convention Against Doping in Sport.

On 1 January 2019 a (as yet) final change to the organisational structure of our NADO took effect: the private foundation Anti-Doping Authority Netherlands was turned into an independent government organisation Doping Authority Netherlands. This process had a long history. In April 2009 the Article 29 Working Group, an advisory body to the European Commission on privacy and data protection, advised that voluntary consent was an insufficient basis for processing personal data in doping control procedures. The Netherlands' Data Protection Authority subsequently advised that a legal task to do so would be a sufficient basis. However, in the Netherlands legal tasks are only given to government organisations, and the NADO was a private foundation. In 2012 the Ministry of Health, Welfare and Sport informed Parliament that it was looking toward legislation to solve this problem. In 2016 draft legislation was introduced into Parliament, which was approved in 2018.

The Anti-Doping Policy Implementation Act came into effect on 1 January 2019, creating the independent government organisation Doping Authority Netherlands. It grants this organisation the following legal tasks:

- To combat doping in sport;
- To execute the doping control process;
- To collect and investigate information on possible anti-doping rule violations;
- To provide education on anti-doping;
- And to perform any other tasks bestowed on it by the Ministry.

The Act also grants the Doping Authority Netherlands the authority to process personal data to perform these tasks. And it identifies Doping Authority Netherlands as the national anti-doping organisation.

With this piece of legislation the government has tried to codify into law as much as possible the existing anti-doping structure in the Netherlands. It positions Doping Authority Netherlands in relation to its two sponsors, NOC*NSF and the Ministry of Health, Welfare and Sport, while safeguarding its operational independence. What did change is that government regulations, including those on transparency and 'open government', now also apply to Doping Authority Netherlands. The Anti-Doping Policy Implementation Act does not set anti-doping rules, these still have a private status in our country. Anti-doping rules are encased in the National Doping Rules, which are written by Doping Authority Netherlands, in keeping with the World Anti-Doping Code, and are adopted by the national sports federations.

The Act and the way it is structured illustrates the current policy paradigm for anti-doping policy in the Netherlands, which has historically grown from the sports movement: combating doping in sport is primarily a task for the sports movement, with government supporting and facilitating if and whenever necessary. The second part illustrates the responsibility that government has stemming from international treaties on the subject. In practice this means that NOC*NSF finances doping controls in the Netherlands and is the Doping Authority's primary partner for anti-doping education. The Ministry finances the organisation as such, making sure that there is an organisation available for anti-doping education and to execute doping controls. The Doping Authority therefore also has two primary financial sponsors: NOC*NSF and the Ministry of Health, Welfare and Sport.

Table 1. Budget of National Anti-Doping Authority of the Netherlands (in euros)

	Total budget	Contribution NOC*NSF	Contribution Ministry
2018	3.51M	1.63M	1.88M
2019	4.28M	1.99M	2.29M
2020	3.62M	0.98M	2.65M
2021	4.68M	1.75M	2.93M

(NB. It should be noted that 2018 was the final year for Anti-Doping Authority Netherlands as a private foundation, the predecessor of the current Doping Authority Netherlands, which in 1 January 2019 became an independent governing body. 2020 shows diverging figures, because of the impact of Covid-19 on Doping Authority Netherlands. The figures for 2021 represent the approved budget for this year.)

2 Definition and scope of the Convention

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 followed in virtually all competitive sports (i.e. the broader 'Olympic family'). The Netherlands actively shares its input for the draft Prohibited List after WADA's call to do so. This is a combined effort of the parties involved (Ministry, NADO, NOC and Athlete Committee). We actively share our response with colleagues, and it is available for the general public through the website of the NADO. At the same time, we always explain the necessity and backgrounds of the harmonized List to athletes and the general public.

The terms 'sportsmen and sportswomen' in this article is taken broadly. While doping controls are directed primarily at elite athletes, education programmes are available for all athletes and all disciplines of sport. More detail into the Doping Authority's education efforts will be provided under article 6.

3 Domestic co-ordination

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.

Domestic coordination takes place on several levels. The primary stakeholders concerned with anti-doping policy and combating doping in sport in the Netherlands are Doping Authority Netherlands, NOC*NSF and its Athlete Committee, and the Ministry of Health, Welfare and Sport. We meet as a group at least once every three months, to discuss recent developments in anti-doping in our country, among other things on the points mentioned in article 7 of the Convention. Relevant research projects and their outcomes are discussed. And we coordinate on international affairs as well, for instance on contributions to WADA's draft prohibited list, on nominations to WADA Standing Committees, or in preparing the bi-annual Monitoring Group-meetings, where Doping Authority Netherlands' joining the Ministry as expert adviser is a matter of course.

In addition to the three-month-meeting we often meet bilaterally as well.

Other public agencies should be mentioned here as well. Doping substances are covered by several different legislative frameworks: the Medicines Act, supervised by the Healthcare Inspectorate IGJ and the Netherlands Food and Consumer Product Safety Authority NVWA; the Commodities Act, supervised by the Netherlands Food and Consumer Product Safety Authority NVWA; and the Opium Act, supervised by the Customs Service. Sometimes the Penal Code is relevant as well, which is when

the National Police and Public Prosecutor take control. Finally, the Fiscal Information and Investigation Service FIOD is sometimes involved as well.

Each of these actors has its own role and responsibilities. For none of them combating doping in sport is the main focus; mostly doping is approached as part of combating the illegal trafficking of medicines. But from their own frameworks each of these organisations can contribute to combating doping as well.

Since 2013 there is a regular meeting between Doping Authority Netherlands and the public agencies mentioned above, facilitated by the Ministry of Health, Welfare and Sport. The frequency of which varies between twice and three times a year. The goal of the meeting is to share information and signals received by each of the organisations, as well as to discuss new developments in the field of doping substances. It must be noted, however, that organisations have not been able to share all the information and signals they possess on doping substances. An important obstacle to the outright sharing of this information is the so-called principle of purpose: information gathered by these organisations may legally only be used for the purpose for which it is gathered. It means that information gathered by Customs to monitoring adherence to the Customs Act, may only be used for that purpose and may legally not be shared with Doping Authority Netherlands to pursue possible anti-doping rule violations or illegal trade in doping substances. Nevertheless, organisations are still able to share information and signals, and despite greater ambitions of some for sharing more information the meeting is perceived as meaningful.

In 2017 there were calls from Parliament for closer cooperation between these organisations to combat doping. This resulted in the drawing up of so-called cooperation protocols between Doping Authority Netherlands and each of these organisations, in the wake of the establishment of Doping Authority Netherlands as an independent government organisation. This new, public status to a limited extent expanded the possibilities for sharing information by other public agencies involved. In the protocols, the expectations of the bilateral cooperation are specified, which enhanced some of the bilateral relations. The protocols are intended to maximize the potential of the bilateral relations, given that the principle of purpose still applies. The practical value of these protocols is yet to be determined.

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

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.

As was mentioned under the previous article, doping substances fall under several legislative frameworks: the Medicines Act; the Commodities Act; and the Opium Act. In addition, the Customs Act has been used in targeting the illegal trafficking of medicines, and in doing so also restricting the availability of doping substances. The National Doping Rules (compatible with the World Anti-Doping Code and with this Convention) and the doping control process executed by Doping Authority Netherlands, as well as education programmes developed by Doping Authority Netherlands, are intended to combat the use of doping substances in sport.

An extensive research project carried out in 2019-2020 into the nature, extent and seriousness of (illegal) trade in doping substances in the Netherlands concluded that, though this is considered a serious problem, among other things because of the sometimes close relation to undermining criminal activities, the extent of this trade is not disquieting.

Financial assistance for sports organisations for financing doping controls is provided through funds from the National Lottery provided to NOC*NSF. With regard to public subsidies for sports organisations, for a number of years now it has been a criterion for receiving these subsidies to abide by national doping rules; failure to do so may ultimately result in the subsidies being reclaimed by the government. Individual athletes who serve a period of ineligibility cannot receive athletic-based funding, but psychological help during this period is available. All doping controls take place in accordance with WADA protocols.

5 Laboratories

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.*

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 Netherlands does not have a WADA-accredited laboratory within its borders. Given the presence of two excellent laboratories within a 3-hour-radius of Capelle aan den IJssel, where Doping Authority Netherlands is based, this is not deemed necessary. Most analyses are performed by the laboratory in Ghent, Belgium, but contacts exist with all laboratories around the world and on an annual basis at least five different laboratories are used, mirroring the fact that elite sport participation is truly global and Dutch athletes roam the world during training and competition.

Since Doping Authority Netherlands was founded the organisation has a separate scientific budget to fund research, strengthening anti-doping policies. Annually, one of the research projects of the Cologne laboratory, a laboratory renowned for its research program, is funded through this budget. In addition, the science officer and various other staff members of the NADO regularly contribute to scientific publications. An overview of these publications can be found in a separate appendix.

6 Education

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.

The oldest legal predecessor of Doping Authority Netherlands started as an educational foundation, and ever since education is central. The educational policy of Doping Authority Netherlands makes a clear distinction between elite sports (organised sports) and fitness (sports organised on other lines). The Anti-Doping Policy Implementation Act specifically mentions the provision of education to athletes as a legal task.

Doping Authority Netherlands developed an 'ongoing education for doping-free sports' in collaboration with the NOC*NSF in 2015. This programme describes the

knowledge, skills and attitude needed for doping-free sport for all ages and development phases. It is the main component of our Elite Sports Education Plan, as required by WADA since 1 January 2021. It targets (future) elite athletes, support personnel and sport federations and consists of education sessions in person, an e-learning platform, educational videos (also shared through social media), a Doping Information App (including a feature that explains the doping status of all regular medicines that are available in the Netherlands), outreach events and a 'Be PROUD' promotional campaign.

A specific educational function has the Anti-Doping Knowledge Center, which can be found on www.doping.nl, which collects and shares all different sorts of doping materials, including legal decisions, scientific publications, educational materials and historical documents.

As we feel an obligation to serve all sportsmen and sportswomen we also have an active program to inform fitness athletes and to try and persuade them to remain doping-free. The convention mentions "organised sports activities" and many of these athletes organise themselves as being a member of a gym/fitness center/health club. We reach these athletes through websites, apps, books, e-learning and by playing a role in the education of future fitness trainers.

Besides the specific educational efforts towards athletes, support personnel and federations there is a close cooperation between various organisations who are connected to anti-doping policies. Examples are the development of guidelines for sports medicine personnel in close cooperation with the national foundation for sports medicine, the existence of a broad integrity & sports meeting under guidance of NOC*NSF and coordination with the umbrella organization of fight sports.

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

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 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.*
- 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 authorized 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 Antidoping 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.*

Most of the requirements in this article call for harmonization. These requirements are met by harmonized anti-doping regulations in the National Doping Rules, and by following the standards and procedures from the WADP and the relevant International Standards.

For almost all sport disciplines that follow the World Anti-Doping Code (WADC) alleged Anti-Doping Rule Violations (ADRVs) are brought forward to the independent Institute for Sports Law ISR, which then proceeds with the disciplinary proceedings. Some federations still have their own disciplinary system in place but the intention is for all disciplinary proceedings involving anti-doping rule violations to be transferred to the ISR. The ISR can be regarded as an independent third party conducting the disciplinary proceedings, which is beneficial for preventing conflicts of interests and in keeping with principles of due process and the principles laid down in the World Anti-Doping Code for disciplinary proceedings.

In 2019, recognising the sometimes enormous cost of mounting a defense in disciplinary proceedings, a fund was created by NOC*NSF and with financial assistance from the Ministry. In tandem with this measure, athletes are encouraged to take out legal insurance covering financial costs for disciplinary proceedings. The financial resources are aimed at covering excessive costs for representation and are available under the precondition that financial assistance available from legal insurance has been exhausted by the individual involved. In doing so, the right to a fair hearing and to legal assistance is safeguarded.

The "imposition of effective penalties for officials, doctors, veterinary doctors, coaches, physiotherapists and other officials or accessories" is regulated in the WADP as well when targeting their participation and involvement in competitive sports; there is no jurisdiction to penalize them outside the athletic environment, even though it can be expected that if such cases occur (and they are rare) the

disciplinary law of the specific profession will regard an ADRV as gross misconduct. The Royal Dutch Medical Association has made public statements about this expectation. In fact, in practice support personnel is often hired on contract basis by sport organisations and as such the jurisdiction over them regarding doping regulations is problematic.

Doping Authority Netherlands executes the national doping control programme, which is financed in full by NOC*NSF. Doping Authority Netherlands determines which athletes are in the Registered Testing Pool, and what type of controls, when and how many controls are performed on them. These controls include both in- and out-of-competition controls, both urine and blood samples. Out-of-competition controls are the majority of all controls. As stated when discussing article 5 of the convention, Dutch athletes are tested all over the world, for which we seek cooperation with local NADO-services as being the most economical and efficient way of doing this.

Table 2: Number of doping controls performed by the Doping Authority Netherlands

Year	National Program	Third Party	Total
2021	2.700 (planned)	400 (planned)	3.100 (projected)
2020	1.505	156	1.661
2019	2.427	713	3.140
2018	2.257	880	3.137

Athletes are encouraged to participate in anti-doping work, and as has been described in the introduction there is a close relationship with the national Athlete Committee. In addition, twelve current elite athletes have been selected as 'ambassadors' for Doping Authority Netherlands and they play a major role in many educational campaigns.

Article 7-3-f is slightly different in nature than the other aspects of article 7. Doping Authority Netherlands does not promote alternative methods for optimal athletic performances through sports organisations but rather by continuously promoting the value and impact of your 'own strength' and by providing realistic, science-based information on performance effects of doping substances and methods, which are generally much lower than people expect. This is a combined effort by the NADO and by the NOC, including all staff that is employed by the NOC. These efforts are placed next to values-based education which is more and more gaining momentum.

8 International co-operation

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.

We recognise that for combating doping in sport, international cooperation is essential and indispensable. The Netherlands is, therefore, an active participant in very diverse international fora. There has been a consistent Dutch presence at all meetings of the Council of Europe, including the various advisory groups, including various positions of chair in the past. As in all international contacts this interaction serves two purposes: to share our own experiences and to learn from others'. The Ministry is active in the context of the UNESCO Convention as well, both Doping Authority Netherlands and the Ministry have a good working relationship with WADA and we regularly nominate candidates for WADA's Standing Committees. In addition, we actively participate in the International Anti-Doping Arrangement IADA as well as in iNADO.

9 Provision of information

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.

Every year the Netherlands submits the T-DO questionnaire. The various questions are answered by the various organisations that are involved in the national anti-doping programme and in compiling this report.

10 Additional information

Much more information can be found on the website of Doping Authority Netherlands, specifically in its annual reports. Please refer to the following webpage: <https://jaarverslag.dopingautoriteit.nl/2020/en> .

In this report we repeatedly mentioned the Anti-Doping Implementation Act as an important piece of legislation for the positioning of Doping Authority Netherlands. For a more thorough understanding of this legislation and its intentions, you will find attached a translation of the Anti-Doping Policy Implementation Act, as well as the Explanatory Memorandum, which is a mandatory document in Dutch parliamentary proceedings.

A final attachment to the report is a translation of our National Doping Rules NDR.

Epilogue

This concludes the self-evaluation report we have prepared for the Council of Europe, in preparation to the monitoring visit to our country scheduled for 13-14 September 2021.

We have tried to concisely provide you with insight into the way we organized our anti-doping system, its history, stakeholders and the measures we have in place. We are confident it meets international compliance standards, even though we continuously see potential improvements, as the case should be in the world of sports.

In the Netherlands, having routine independent evaluations is considered part of good governance principles and built into our standard policy process. Which is why we are looking forward to the evaluation of the Anti-Doping Implementation Act, and the evaluation of the wider anti-doping policy of the Netherlands scheduled for 2022. Having independent experts give feedback is always a good idea, which is why we have initiated this monitoring visit and the subsequent evaluation of our national anti-doping policy.

We look forward to fruitful discussions with the Council of Europe-delegation, and to welcoming you to The Hague.

Appendix 1 – List of scientific publications by Doping Authority Netherlands

This is a full list of scientific publications from the past four years where staff members of the NADO have made contributions that merit co-authorship.

2021:

- Smit, D.L., M.M. Buijs, O. de Hon, M.den Heijer & W. de Ronde. Disruption and recovery of testicular function during and after androgen abuse. The HAARLEM study. Accepted for publication, Human Reproduction.
- Gleaves J, A Petróczi, D Folkerts, O de Hon, E Macedo, M Saugy, M Cruyff. Doping prevalence in competitive sport: Evidence synthesis with “best practice” recommendations and reporting guidelines from the WADA Working Group on Doping Prevalence. Accepted for publication, Sports Medicine.
- Sagoe D, M Cruyff, O Spendiff, R Chegeni, O de Hon, P van der Heijden, M Saugy, A Petróczi. Functionality of the Crosswise Model for Assessing Sensitive or Transgressive Behavior: A Systematic Review and Meta-Analysis. *Frontiers in Psychology*, doi: 10.3389/fpsyg.2021.655592, 2021.
- Duiven E, LJC van Loon, L Spruijt, W Koert & O de Hon. Undeclared Doping Substances are Highly Prevalent in Commercial Sports Nutrition Supplements. *Journal of Sports Science and Medicine* 20: 328-338, 2021.

2020:

- Den Ouden, F. & W. Koert. Natuurlijke bèta-2-agonisten in sportsupplementen. [Natural beta2-agonists in sport supplements]. *Fytotherapie* 2020;33(1):17-8.
- Duiven, E. & W. Koert. Dopingmiddelen in sportsupplementen. [Doping substances in sport supplements]. *Sport & Geneeskunde* 2020; 1:6-13.
- Olijhoek, M, W. Koert & E. van den Worm. Cathinonen in webshops. Vrij verkrijgbare experimentele harddrugs. [Cathinones in webshops. Freely available experimental hard drugs]. *TSG Tijdschr Gezondheidswet*, 99: 40–45, 2020.
- Ram, H. De herziening van de World Anti-Doping Code. [Revision of the World Anti-Doping Code]. *Sport & Geneeskunde*, 1: 56-58, 2020.
- Smit, D.L., O. de Hon, B.J. Venhuis, M. den Heijer & W. de Ronde. Baseline Characteristics of the Haarlem Study: 100 Male Amateur Athletes Using Anabolic Androgenic Steroids. *Scand J Med Sci Sports* 30: 531–539, 2020.
- Smit, D.L., M.M. Buijs, O. de Hon, M. den Heijer & W. de Ronde. Positive and negative side effects of androgen abuse. The HAARLEM study: a one year prospective cohort study in 100 men. *Scand J Med Sci Sports*, doi: 10.1111/sms.13843, 2020.
- Wardenaar, F.C., D. Hoogervorst, K.A. Vento & O. de Hon. Dutch Olympic and Non-Olympic Athletes Differ in Knowledge of and Attitudes Toward Third-party J Diet Suppl, doi: 10.1080/19390211.2020.1829248, 2020.

2019:

- Heuberger, J.A.A.C., P. van Eenoo, J.I. Rotmans, P. Gal, F.E. Stuurman, T.E. Post, J.M.A. Daniels, H. Ram, O. de Hon, J. Burggraaf, A.F. Cohen. Sensitivity and specificity of detection methods for erythropoietin doping in cyclists. *Drug Testing and Analysis* 11: 1290–1301, 2019.
- Hilkens, L., Wassink, H. & Maas, T. Krachttraining voor meer spiermassa, deel 1: Functies van spierweefsel en mechanismen van hypertrofie. [Weight training for more muscular mass, part 1: muscle tissue functions and hypertrophy mechanisms]. *Sportgericht* (2019), nr. 5.
- Hilkens, L., Wassink, H. & Maas, T. Krachttraining voor meer spiermassa, deel 2: Kritische beschouwing van trainingsvariabelen. [Weight training for more muscular mass, part 2: critical assessment of training variables]. *Sportgericht* (2019), nr. 6.
- Koert, W. Anabole steroïden. Van medicijn tot dopingmiddel. [From medicine to doping substance]. *Folia Pharmaceutica* (2019), nr. 3
- Peeling, P., L.M. Castell, W. Derave, O. de Hon & L.M. Burke. Sports Foods and Dietary Supplements for Optimal Function and Performance Enhancement in Track and Field Athletes. *International Journal of Sport Nutrition and Exercise Metabolism* 29(2): 198-209, 2019.

2018:

- Causanilles A, V Nordmann, D Vughs, E Emke, O de Hon, F Hernandez & P de Voogt. Wastewater-based tracing of doping use by the general population and amateur athletes. *Analytical and Bioanalytical Chemistry* 410(6) 1793-803, 2018.

PhD-theses written by Dopingautoriteit staff:

- De Hon O. *Striking the Right Balance – Effectiveness of Anti-Doping Policies* (dissertation Utrecht University), 2016.
- Hartgens F. *Androgenic-anabolic Steroid Use in Strength Athletes; effects on body composition and cardiovascular system* (dissertation Maastricht University), 2001.

Session year 2015-2016

34 543

Rules to implement the anti-doping policy and to establish the Anti-Doping Authority of the Netherlands (Anti-Doping Policy (Implementation) Act [*Wet uitvoering anti-dopingbeleid*])

No 2

We, Willem-Alexander, by the Grace of God, King of the Netherlands, Prince of Orange-Nassau, etc., etc., etc.

Greetings to all who will see or hear these present! Be it known:

Whereas We have considered that it is desirable to provide for a public-law regulation for the implementation of the anti-doping policy and the establishment of the Anti-Doping Authority as non-departmental public body to strengthen the anti-doping policy;

We, therefore, having heard the Advisory Division of the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Section 1 Definition of terms

In this Act and the rules based on it, the following definitions apply:

anti-doping organisation: organisation as referred to in Article 2(2), of the International Convention against Doping in Sport (Treaty Series 2006, 194), concluded on 19 October 2005;

data subject: those persons defined as such in Section 1(f) of the Personal Data Protection Act [*Wet bescherming persoonsgegevens*];

exemption: exemption for the use for therapeutic purposes of a substance or method that is prohibited by or pursuant to anti-doping rules;

Anti-Doping Authority: the authority referred to in Section 4;

doping control process: process to establish a possible violation of anti-doping rules;

anti-doping rules: document that contains rules in the area of doping and that is established by a sports organisation or an anti-doping organisation;

Our Minister: Our Minister of Health, Welfare and Sport;

personal data: those data defined as such in Section 1(a) of the Personal Data Protection Act;

personal data regarding a person's health: personal data as referred to in Section 16 of the Personal Data Protection Act;

athlete: person who practises sport and who is bound by anti-doping rules;

sports organisation: nationally organised association of athletes that has legal personality, as well as an umbrella organisation of such associations;

group of top athletes: pursuant to Section 6(1)(b), group of athletes designated by the Anti-Doping Authority that runs an increased risk of violation of anti-doping rules because of the level at which they practise sport;

whereabouts information: personal data with regard to the whereabouts of an athlete at requested dates and indicated times, as well as his contact details;

World Anti-Doping Agency: foundation established on 10 November 1999 and aiming to advance and coordinate the fight against the use of doping in sport at an international level;

World Anti-Doping Code: the document established by the World Anti-Doping Agency that forms the basis for anti-doping rules and the global anti-doping policy and that has been published pursuant to Section 3.

Section 2 General rules for athletes

1. Each athlete will ensure, in the interest of doping-free sport, that he acts in accordance with the anti-doping rules binding on him.
2. Without prejudice to the provisions of subsection 1, in the interest of doping-free sport, an athlete who belongs to the group of top athletes is obliged to provide his whereabouts information to the Anti-Doping Authority.
3. If an athlete is subjected to a doping control process and resists the taking and collection of body samples, these will not be taken and collected from him.

Section 3 Notification of the World Anti-Doping Code

1. Our Minister will ensure the notification of the World Anti-Doping Code and any amendments to that Code in the Government Gazette.
2. The notification may be made in English.

Section 4 Establishment of the Anti-Doping Authority

1. There is an Anti-Doping Authority.
2. The Anti-Doping Authority is established in Capelle aan den IJssel.
3. The Anti-Doping Authority has legal personality.
4. The Anti-Doping Authority is the national anti-doping organisation, as referred to in the World Anti-Doping Code.

Section 5 Duties

1. The Anti-Doping Authority has the duty to:
 - a. combat doping in sport;
 - b. execute the doping control process;
 - c. collect and investigate information on possible anti-doping rule violations;
 - d. provide education on doping;
 - e. perform other duties assigned by our Minister that relate to the fight against the use of doping in sport.
2. The duties, as referred to in subsection 1(a) through (d), are performed in accordance with the World Anti-Doping Code.

Section 6 Powers

1. To execute the doping control process, the Anti-Doping Authority is authorised to:
 - a. assess requests for exemption, as well as to grant exemption;
 - b. take decisions regarding the composition of the group of top athletes;
 - c. select and indicate persons from whom body samples will be taken;
 - d. take, collect and analyse body samples;
 - e. manage the results of the laboratory test; and
 - f. participate in disciplinary proceedings.
2. To execute its statutory duties, the Anti-Doping Authority is furthermore authorised to:
 - a. process personal data, including personal data regarding a person's health;
 - b. collect and process whereabouts information of the group of top athletes; and
 - c. provide personal data, including personal data regarding a person's health, to sports organisations for the benefit of the execution of disciplinary proceedings.
3. Without prejudice to what has otherwise been provided in this Act, for the benefit of its statutory duties the Anti-Doping Authority is authorised to collect and process information from public and other sources, including personal data of athletes and of assistants of athletes as referred to in Article 2(5), of the International Convention against Doping in Sport (Treaty Series 2006, 194), concluded on 19 October 2005, which may relate to possible violations of anti-doping rules.

Section 7 Structure

1. The Anti-Doping Authority consists of three members, including the chair.
2. The members are appointed for a period of four years. The members may be reappointed for the same period.

3. The appointment and reappointment of the members takes place at the nomination of one or more sports organisations indicated by Our Minister. The nominated prospective members will comply with the job profiles that have been drawn up jointly by Our Minister, the Anti-Doping Authority or the sports organisation or sports organisations designated by Our Minister.

4. Further rules may be set by ministerial regulation regarding the procedures that will be followed for the nomination of the prospective members and for the joint drawing up of the job profiles, as referred to in subsection 3.

Section 8 Board regulations

1. The Anti-Doping Authority will draw up board regulations and make these public.

2. The board regulations, as referred to in subsection 1, will in any case contain rules regarding the performance of duties, cooperation and decision-making by the members of the Anti-Doping Authority, integrity, mandate and power of attorney.

Section 9 Financing

The costs of the Anti-Doping Authority will be covered by the national budget, income from rates and other income.

Section 10 Rate structure

1. The costs that relate to the performance of the work as referred to in Section 5(1)(b) and (e) may be charged to the party for whom that work is performed.

2. It may be decided by ministerial regulation in what way the involvement of one or more of the sports organisations designated by Our Minister will be safeguarded in the calculation of the rates referred to in subsection 1.

3. If Our Minister withholds approval for the decision to determine the budget, the rate levels, referred to in subsection 1, will be determined by ministerial regulation. The rate levels determined by Our Minister may be maximum amounts.

Section 11 Supervision by Our Minister

Section 22(1) of the Non-Departmental Public Bodies Framework Act does not apply to decisions made by the Anti-Doping Authority.

Section 12 Exchange of data with administrative bodies and anti-doping organisations

1. The Anti-Doping Authority will provide the public prosecution service and the Public Health Supervisory Service [*Staatstoezicht op de gezondheidszorg*] with the data they require to perform their duties.

2. The Anti-Doping Authority may also provide the personal data, including personal data regarding a person's health, to:

- a. anti-doping organisations of the Member States of the European Union; and
- b. anti-doping organisations in other states.

3. The Public Health Supervisory Service will provide the Anti-Doping Authority with the data it requires to perform its duties, with the exception of personal data regarding a person's health.

4. The provision of data referred to in subsections 1 through 3 will not take place if this disproportionately harms the privacy of the data subjects.

5. Without prejudice to the provisions of subsection 4, the provision of personal data to anti-doping organisations, as referred to in subsection 2(b), will only take place if:

- a. the provision is required for the execution of the doping control process; and
- b. access to the data provided is limited to the organisations whose access to the data is required for the execution of the doping control process.

Section 13 Other provisions on the processing of personal data

1. The data processing, as referred to in Section 6(2), will only take place in so far that is required for the execution of the doping control process on the athlete.

2. The Anti-Doping Authority is the controller within the meaning of Section 1(d) of the Personal Data Protection Act, for the data processing as referred to in Section 6(2) and (3).

3. Further rules may be set by order in council with regard to the data processing as referred to in Section 6(2) and (3), and the provision of data as referred to in Section 12(2), opening words and under (b).

Section 14 Transitional provision

1. For application of this Section, foundation will mean: the Anti-Doping Authority of Netherlands Foundation [*Stichting Anti-Doping Autoriteit Nederland*], established on 22 June 2006.

2. After this Act enters into effect:

a. the data files with regard to the doping control process may be transferred by the foundation to the Anti-Doping Authority;

b. the Anti-Doping Authority will enable the foundation to continue the involvement in doping control process already initiated at the time this Act enters into force;

c. the foundation will not execute doping control processes, with the exception of the doping control process as referred to in under (b);

d. the data files, as referred to under (a), are transferred to the Anti-Doping Authority within twelve months after the irrevocable termination of the last doping control process, as referred to under (b).

3. Section 7(3) does not apply to the first time the members of the Anti-Doping Authority are appointed after this Act has entered into effect.

Section 15 Entry into force

This Act will enter into force at a time to be determined by Royal Decree.

Section 16 Short title

This Act will be cited as: Anti-Doping Policy (Implementation) Act.

We order and demand that this Act be published in the Bulletin of Acts and Decrees and that all ministerial departments, authorities, bodies and officials whom they may concern will diligently implement it.

Done

The Minister of Health, Welfare and Sport,

Session year 2015-2016

34 543

Rules to implement the anti-doping policy and to establish the Anti-Doping Authority of the Netherlands (Anti-Doping Policy (Implementation) Act [*Wet uitvoering anti-dopingbeleid*])

No 3

EXPLANATORY MEMORANDUM

GENERAL

1. Introduction

1.1 Background and reason for the legislative proposal

Millions of people in the Netherlands take part in sport. Many people take part in sport to enjoy the exercise, because of the social contacts surrounding sport or simply because it is healthy to play sport. Some of these people take part in competitive sports events, at levels ranging from local competitions to participating in large international sports events in which athletes represent their country. Others also enjoy watching sports. In short, for many people sport is an enjoyable pastime, actively or passively.

Sports competitions must be characterised by fair competition among the competitors, a view that can count on broad support within our society. The principle of fair play is an essential value in sport, works as a rule of conduct for people who wish to take part in sport together and serves as an example for the many people who watch sports. Fair play is about sportsmanship and respect, values that also have an important function in society outside of sport. Athletes endeavour to achieve the best possible result, while observing the rules of the game.

One of the rules of the game is that athletes do not use doping. The trial of strength needs to be fair. Although the majority of Dutch athletes does not use doping, it is unfortunately apparent that in practice athletes try to improve their performance by means of doping with some regularity. Cases are known in which it later turns out that athletes have delivered top performances under the influence of performance-enhancing substances. These are some dozens of cases in the Netherlands each year. Unfortunately, there are also accusations of systemic use of doping in certain countries, and how that use of doping is subsequently concealed.

In those types of cases, the rules of the game are ignored and the competition is falsified. Without fair competition, the love for participating in or attending or watching sports events is replaced by indignation and disappointment, especially with the opponents that did observe the rules, the "clean" athletes. Indignation and disappointment are also experienced by the audience, whose confidence in a clean sport decreases.

Together with sport organisations and "clean" athletes, the government believes that doping prevents fair competition and therefore does not belong in sport. Doping tests form an important instrument in achieving this. After all, doping tests may prove whether athletes participated in a match or competition fairly or not. In addition, detecting doping may contribute to the prevention of the harmful effects that the use of doping has on athletes' health. Doping tests therefore serve to protect the value of fair play and the athlete's health.

At the same time, the athlete's private life is an important value that must be protected. A selection of athletes must report where they will be at a random moment of the day, so that they can be visited by a doping inspector. Samples of

body material are taken during urine and blood tests. The controlling agency collects these samples and other personal data and processes these in order to determine whether doping is involved. Refusing to participate in doping tests generally results in the athlete being excluded from participation in sports activities by the sports association. Having to subject oneself to doping tests therefore constitutes a violation of the private life of athletes. However, the violation is worth it to athletes, in the interest of a clean sport. This illustrates where doping policy and doping tests affect the right to privacy athletes have, just like anyone else. Doping tests will have to meet the standards that have been determined nationally and internationally to protect the privacy of athletes. This has been pointed out, among other things, by the so-called Article 29 Working Party (hereinafter: the Article 29 Working Party), a working party that was set up by Directive 95/46/EG, better known as the European Privacy Directive.¹ The Working Party, in which representatives of the national privacy authorities (in the Netherlands the Dutch Data Protection Authority (DPA)) participate, is independent and has the duty of advising the European Commission regarding privacy issues. It has published a number of positions on the legal basis for the processing of personal data in the context of doping controls.² In these positions, the Working Party discusses, among other things, the requirement of "consent" as the basis for the processing of personal data of top athletes. It concludes that, for persons that engage in a sport at a high level, the sanctions and the consequences attached to a possible refusal to consent to the processing of data in the context of doping controls are so high that consent cannot be considered to have been given freely. According to the Working Party, the data processing consequently insufficiently meets the legal requirements applying as legal basis for consent as laid down in the European Privacy Directive and the Dutch Personal Data Protection Act. Reference points for this position can also be found in the General Data Protection Regulation [*Algemene verordening gegevensbescherming*] determined in the spring of 2016, which will replace the EU Privacy Directive in the future.³

Although it is ultimately up to the European court to determine to what extent the Article 29 Working Party correctly identifies a risk, the undersigned have acknowledged that the basis for the processing of data in doping tests forms a risk and therefore requires reinforcement.⁴ We refer, in particular, to the letter of 1 December 2014, which sketches the outlines of the legislative proposal under consideration.⁵ The legislative proposal under consideration constitutes the specific elaboration of that letter.

1.2 Purpose and contents of the legislative proposal

The purpose of the legislative proposal is to reinforce the fight against doping in sport. To that end, it provides in a regulation for the implementation of the anti-doping policy in a way that does justice to the starting principle that combating doping in sport is to a significant degree a responsibility of the sport. The current anti-doping policy, in which sports organisations take this responsibility and in which the government acts in a facilitating role, reflects this starting principle. In order to provide a proper framework for the government's facilitating role, it is firstly proposed, also in view of the advice of the Advisory Division of the Council of State, to provide for certain rights and duties of the athlete in the area of combating doping as a supplement to already existing anti-doping rules. In addition, this legislative proposal provides for the formation of a public-law independent administrative body that is charged with the duty of combating doping in sport, executing the doping control process, collecting and investigating information on possible violations of anti-doping rules and providing education on

¹ Directive (EU) 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJEU L281).

² Article 29 Data Protection Working Party, Opinion 3/2008 (1 August 2008, WP156), page 5; Opinion 4/2009, WP162), page 11; Opinion 15/2011 (13 July 2011, WP187), page 13.

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), recital 43.

⁴ Letter of 17 May 2010, Parliamentary questions 2010Z07264; Parliamentary Papers II 2013/14, 33 750 XVI, no. 13, page 94; Parliamentary Papers 2013/14, 33 750 XVI, no. 2, page 302.

⁵ Parliamentary Papers 2014/15, 30 234, no. 117.

doping. The major responsibility sports organisations have in the area of combating doping is supplemented and supported in this legislative proposal by a public-law regulation of the anti-doping policy. That regulation provides for the rights and duties of athletes and creates safeguards for the athlete, among other things, in the area of the protection of privacy (for example regarding the provision of personal data to foreign anti-doping organisations), balanced with the effective combating of doping in sport. The legislative proposal enables sports organisations, supported by the government, to take their responsibility for a widely supported social ideal: fair and healthy sport.

As indicated in the report to the King, the legislative proposal has been supplemented and amended in several areas following the advice of the Advisory Division of the Council of State and the explanatory memorandum has been thoroughly revised.

In the opinion of the undersigned, this legislative proposal finds a good balance between, on the one hand, effective combating of doping in sport and, on the other hand, the interests of athletes.

Pursuant to Section 6 of the Non-Departmental Public Bodies Framework Act [*Kaderwet zelfstandige bestuursorganen*], the Minister of Housing and the Central Government Sector is co-signatory of this legislative proposal. The explanation is therefore also given on behalf of the Minister of Housing and the Central Government Sector.

2. International context of the Dutch anti-doping policy

The regulation of the doping tests in the legislative proposal under consideration must be considered in light of the existing international instruments in the area of the fight against doping. First of all, we must mention the World Anti-Doping Code (hereinafter: the Code), of which the revised version entered into force on 1 January 2015.⁶ The purpose of the Code is "to protect the athlete's fundamental right to participate to doping-free sport and thus promote health, fairness and equality for athletes". The Code is part of the World Anti-Doping Programme and contains provisions on doping tests, education and research, duties and responsibilities of parties involved and several formal aspects. The Code is binding for the World Anti-Doping Agency (hereinafter: WADA), the International Olympic Committee and national Olympic committees, the International Paralympic Committees, international federations, major event organisations, and national anti-doping organisations (Article 23.1.1). These parties are obliged to implement the Code; WADA supervises this implementation. In principle, the Code is not binding for states, but signatories are obliged – briefly stated – to observe the principles of the Code via the International Convention against Doping in Sport, which is discussed below.

More specifically, the Code includes the following obligations: the prohibition on the presence of a prohibited substance or method in the body of an athlete (Article 2.1.1), facilitating, supporting, etc. that presence (Article 2.9) by another person than the athlete; the obligation for athletes to cooperate in a doping test (Article 5.2); the obligations for athletes who form part of a so-called registered testing pool to provide whereabouts information and contact details (Article 5.6) the obligation for anti-doping organisations to obtain and process intelligence on anti-doping rule violations (Article 5.8.1); rules for the analysis of samples (Article 6), and sanctions for anti-doping rule violations (Article 10). With regard to the subject "education and research", the Code prescribes, among other things, that the parties involved promote the research into doping (Article 19.1). In addition, it describes various duties the aforementioned organisations must fulfil. For example, national anti-doping organisations must perform their work independently, adopt and implement anti-doping rules and policy in accordance with the Code and investigate all possible anti-doping rule violations, including the possible involvement of supporting staff of athletes (Articles 20.5.1, 20.5.2 and 20.5.7). In the Netherlands, these duties are in principle performed by the Anti-Doping Authority the Netherlands (hereinafter: the Anti-Doping Authority) based on the National Anti-Doping Rules.

Another important instrument is the International Convention against Doping in Sport (Treaty Series 2006, 194), which was signed on 19 October 2005. It was accepted by the Netherlands on 17 November 2006, and entered into force for the European part of the Kingdom on 1 February 2007. After the Convention also entered into force for Aruba on 1 September 2008, Bonaire, Sint Eustatius, Saba,

⁶ Available on <http://www.wada-ama.org>.

Curacao and Sint Maarten became bound by the provisions of the Convention on 10 October 2010. The purpose of the Convention, which was created in the context of the United Nations Educational, Scientific and Cultural Organisation (UNESCO), is to promote the prevention of and the fight against doping in sport, with a view to its elimination. Important obligations that ensue from the Convention are: to adopt appropriate measures at the national and international levels which are consistent with the principles of the Code in order to achieve the purpose of the Convention (Article 3(1)); to commit themselves to the principles of the Code in order to coordinate the implementation, at the national and international level, of the fight against doping in sport (Article 4(1)); to adopt appropriate measures, including legislation, regulation, policies or administrative practices in order to abide by the obligations contained in the Convention (Article 5); to take measures or encourage sports organisations and anti-doping organisations to adopt measures, including sanctions or penalties, aimed at athlete support personnel who commit an anti-doping rule violation or other offence connected with doping in sport (Article 9); and to encourage and facilitate the implementation by sports organisations and anti-doping organisations within their jurisdiction of doping tests in a manner consistent with the Code (Article 12, opening words and under (a)).

Finally, the Anti-Doping Convention (Treaty Series 1991, 8) can be mentioned, which was created in the context of the Council of Europe. The Convention was signed by the Netherlands on 4 December 1990 and ratified on 11 April 1995. The Convention provisions entered into force for the European part of the Kingdom on 1 June 1995. Since 10 October 2010, Bonaire, Sint Eustatius, Saba, Curacao and Sint Maarten have also been bound by the it. The Anti-Doping Convention reflects the efforts for "the reduction and eventual elimination of doping in sport" (Article 1). To that end, the parties have the obligation to "encourage and, where appropriate, facilitate the carrying out by their sports organisations of the doping controls required by the competent international sports organisations (...)" (Article 4(3)(c)). Another provision relevant to the application of this legislative proposal obliges states to encourage their sports organisations to introduce, on an effective scale, doping tests not only at, but also without advance warning at any appropriate time outside, competitions (Article 7(3)(a)).

The government believes that the current legislative proposal, which creates a statutory authority for the Dutch anti-doping organisation, gives substance to the purpose of the Code and the above-mentioned conventions and as a result further facilitates the fight against doping.

3. The Dutch anti-doping policy

Anti-doping policy in the Netherlands is internationally oriented, for understandable reasons. The Code is guiding for the implementation of the anti-doping policy. This ensures a performance that links up with the global standard that is promoted by WADA.

The anti-doping policy is a joint responsibility of both organised sport and the government. This is confirmed in the positioning of the Anti-Doping Authority as an independent administrative body (see section 4 of this explanatory memorandum). With this, the government takes its responsibility by creating the preconditions to give the Dutch anti-doping policy tangible substance and to provide it with public safeguards. As the national anti-doping organisation, the Anti-Doping Authority, partially funded by budgetary means, is charged with a number of duties and has powers to implement the anti-doping policy. In doing so, the Anti-Doping Authority not only executes doping control, but is also the knowledge centre for education on doping and its dangers. In addition to this responsibility of the government, enforcement of the anti-doping policy is a responsibility of organised sport: an anti-doping rule violation is the same as a violation of a rule of the game. Within the sport in question, there are disciplinary procedures to punish such a violation. The government is unwilling to involve itself in the disciplinary settlement of such violations, in so far as the boundaries of the general criminal law are not violated. Examples of the latter are offences such as assault or criminally negligent homicide.

In addition, the Minister of Health, Welfare and Sport maintains close contact with organised sport to place anti-doping policy within sport high on the agenda and to keep it there. To that end, initiatives are being developed by the government or initiatives are materially supported by sports organisations.

4. Establishment of the Anti-Doping Authority as a non-departmental public body

4.1 Justification of the establishment of the Anti-Doping Authority as a non-departmental public body

In accordance with the international instruments described above, the government attaches considerable importance to acting decisively in the fight against doping in sport. However, the activities performed by the Anti-Doping Authority in that context will also have to comply with the applicable safeguards under privacy law. The necessity to unite both interests, i.e. the fight against doping and privacy, is also formulated in Article 14.6 of the Code, which provides: "Antidoping Organizations may collect, store, process or disclose personal information relating to athletes and other persons where necessary and appropriate to conduct their anti-doping activities [...] in compliance with applicable law". Because, according to the aforementioned opinion of the Article 29 Working Party, the consent given by athletes is insufficient for the processing of personal data in the context of the fight against doping and there is therefore a legal risk in this area, the government has investigated what alternatives there are to comply with the safeguards under privacy law.

For example, it was investigated whether the Anti-Doping Authority had a justified interest within the meaning of Section 8, opening words and under (f), of the Personal Data Protection Act. Although the Anti-Doping Authority certainly has an interest here, in view of the state of the case law it would remain unclear whether this was sufficient to base all data processing of the Anti-Doping Authority on. Proper execution of the doping control process also requires medical personal data, such as information on the use of medicines. The use of such data is subject to additional criteria to protect the athlete's privacy; a justified interest is not sufficient here.

As an alternative, it was considered to what extent data processing can be based on an agreement. Arranging the execution of the doping control process by way of an agreement would ensure that it is provided by law that doping tests may only be performed if based on an agreement between the athlete and his sports association. Because the athlete commits himself to that agreement, the Anti-Doping Authority would be able to base the processing of personal data on that agreement. It ultimately turned out that this offers insufficient basis for all aspects of the anti-doping policy. One of the reasons for this is that national anti-doping organisations such as the Anti-Doping Authority are obliged pursuant to the WADA Code to test not only athletes in the context of the so-called intelligence & investigations activities, but also to obtain and process the personal data of persons in the athlete's environment. These are persons such as coaches, medical and paramedical professionals and parents. These persons are not always affiliated with a sports association, nor are they bound by the accompanying anti-doping rules. These groups in the athlete's entourage do not have to enter into an agreement with the sports association and it is expected that the majority of them would also not be willing to do so. That would make the intelligence & investigation activities with regard to this group impossible. The same risk exists with regard to foreign athletes that participate in competitions in the Netherlands. The Anti-Doping Authority would then only be allowed to perform the tests if those athletes are bound by an agreement. It cannot always be determined if, and if so, to what extent those athletes have an agreement with their (foreign) sports association or anti-doping organisation that would also comply with the requirements that would have been made for such an agreement pursuant to Dutch law. Another reason why the use of agreements as basis for the processing of personal data was ultimately abandoned was that the fight against doping would entirely be dependent on the cooperation of the athlete and the sports association, which could designate another organisation as the performer of the doping tests. This dependency on agreements between athletes and sports associations would not link up properly with the international context of the anti-doping policy and the central role the Anti-Doping Authority has in the current anti-doping policy. This central role ensues from the appointment of the Anti-Doping Authority as the sole national anti-doping organisation and is reflected, in particular, in the performance of the above-mentioned intelligence & investigations activities and the intended exchange of data with other government bodies such as customs and the Healthcare Inspectorate, the issuing of medical dispensations and the processing of the whereabouts information of athletes.

A basis for the processing of personal data that gives the most justice to the aforementioned shared responsibility of sports organisations and the government in the area of the fight against doping can be found in Section 8(e) of the Personal Data Protection Act: the data processing is required for the proper performance of a public-law duty by the administrative body in question or the administrative body to which the data are provided. In order to rely on this basis, a public-law regulation must exist that assigns one or more duties to an administrative body, in this case the Anti-Doping Authority. The legislative proposal provides for that, which creates a statutory regime that serves to supplement and strengthen the activities that sports organisations already perform themselves in the fight against doping.

Assigning a public-law duty to the Anti-Doping Authority creates an administrative body, because there is a "body of a legal entity that is established under public law", and as a result the definition of Section 1:1(1) of the General Administrative Law Act is met. The establishment and assigning of authorities, for which the current legislative proposal provides, also means that the Anti-Doping Authority can be designated as a non-departmental public body. A non-departmental public body is defined as "an administrative body of the central government that is invested with public authority by law, pursuant to law by order in council or pursuant to law by ministerial regulation, and that is not hierarchically subordinate to a Minister" (Section 1(a) of the Non-Departmental Public Bodies Framework Act; hereinafter: the Framework Act). After this legislative proposal has entered into force, the Framework Act will apply to the non-departmental public body to be established. Pursuant to Section 3(1), opening words and under (a), of the Framework Act, a non-departmental public body can be established if there is a need for an independent formation of opinion based on specific expertise. As already indicated in the letter of 1 December 2014, the government believes this is the case: it is desirable that sports organisations take their own responsibility in the fight against doping in sport, in which they are supported by the government. Moreover, the performance of doping tests is largely a very technical matter that requires the presence of specific knowledge. Within the Netherlands, this expertise is pre-eminently and exclusively present at the already existing Anti-Doping Authority Foundation. In addition, the Anti-Doping Authority is deemed to be independent in the performance of its activities in the context of combating doping (Article 20.5.1 of the Code). We can furthermore refer to Article 22.6 of the Code, which provides that governments must respect the autonomy of anti-doping organisations and may not involve themselves in operational decisions and activities. The government believes that the current legislative proposal therefore complies with the basis for the establishment of a non-departmental public body, as prescribed by the Framework Act.

4.2 Relationship with decision framework for privatisation and hiving-off of government services

In the letter of 21 January 2015, a letter regarding a decision framework for privatisation and hiving-off was sent to the Senate (Parliamentary Papers I 2014/15, C, Y). This letter describes how the considerations that play a role in privatisation and hiving-off are enshrined in the policy process. This also includes the establishment of a non-departmental public body, for which this legislative proposal provides. Against that background, it is desirable to discuss a number of subjects from the decision framework. The public interests that are served by this legislative proposal are the principle of fair play and the health and privacy of athletes. As a result of the establishment of the non-departmental public body, these public interests, in so far as they relate to doping tests, are represented by the Anti-Doping Authority; the Anti-Doping Authority will become the government agency primarily responsible in the area of doping tests. This gives justice to the position the Anti-Doping Authority takes between the government and the world of sport. This does not affect the fact that the Minister of Health, Welfare and Sport supervises the Anti-Doping Authority's activities in accordance with the customary frameworks. This will be discussed in the section below.

4.3 Consequences of the establishment of the Anti-Doping Authority as a non-departmental public body

The establishment of the Anti-Doping Authority as a non-departmental public body and the application of the Framework Act have a number of consequences for the Anti-Doping Authority. These relate, among other things, to the

appointment, suspension and dismissal of members of the non-departmental public body (Section 12), the admissibility of ancillary positions of members of the non-departmental public body (Section 13), the remuneration or compensation of members of the non-departmental public body (Section 14), the legal position of staff members employed by the non-departmental public body (Section 15), the preparation of an annual report (Section 18(1)), the provision of required information to the Minister of Health, Welfare and Sport (Section 20(1)), the authority of the Minister to adopt policy rules (Section 21), the annual submission of the budget to the Minister (Section 26), the approval of the budget by the Minister (Section 29) and the submission of the financial statements (Section 34(1)). Finally, both the House of Representatives and the Senate will be informed of the efficiency and effectiveness of the performance of the non-departmental public body every five years (Section 39(1)).

The government expressly intends to give justice to the position the Anti-Doping Authority takes up between the government and the sports world. Also in that light, it is proposed to have the appointment of the board members by the Minister of Health, Welfare and Sport preceded by a nomination made by the organised sport. The legislative proposal therefore gives the Minister the authority to designate an organisation that is representative for the sports world. The idea is to designate NOC*NSF, as the federation of sports associations. This also links up with the situation in practice until this legislative proposal enters into force, in which the board members of the foundation of the Anti-Doping Authority were appointed at the (separate) nomination of NOC*NSF and of the Minister. The nomination of board members by NOC*NSF takes place on the basis of job profiles drawn up by NOC*NSF, the Anti-Doping Authority and the Minister of Health, Welfare and Sport together, after which the Minister of Health, Welfare and Sport makes the appointment. As intended, this gives justice to the positioning of the Anti-Doping Authority between the government and the sports world. With regard to the number of board members, it is proposed to link up as much as possible with the composition of the Anti-Doping Authority as foundation. This model functions well and there is no reason to change that. In specific terms, this means that a board model with three officers is chosen, who will perform their duties part-time. The Anti-Doping Authority will appoint a director, who will be employed by the non-departmental public body.

One important change for employees of the Anti-Doping Authority is that their employment contract with the Anti-Doping Authority Foundation will be dissolved, after which they will acquire an official legal position in accordance with the Framework Act. Further agreements will be made on this aspect with the parties involved.

4.4 Supervision by the Minister of Health, Welfare and Sport

The Minister of Health, Welfare and Sport bears systemic responsibility for the activities of the Anti-Doping Authority non-departmental public body. That is why it is important to provide for an effective supervisory regime, as is laid down in the Non-Departmental Public Bodies Framework Act. It is proposed to deviate from the general supervisory regime of the Framework Act on one aspect, namely to exclude the Minister's power to annul. The reason for this is that such a power is at odds with executing the doping control process in individual athletes independently, on the basis of specific expertise. An example of a decision that could be made by the Anti-Doping Authority is a decision regarding an exemption request. For such a request, it is assessed whether an athlete could be allowed in a specific case to use a substance or method that is prohibited in principle for therapeutic purposes. These are decisions regarding individual athletes that should not be brought under the responsibility of the Minister of Health, Welfare and Sport. By annulling such decisions, the Minister of Health, Welfare and Sport would no longer restrict himself or herself to setting frameworks for the effective and sound fight against doping, but would also *give substance* to those frameworks. This could have the effect that the independent nature of the execution of the doping control process, which is required by the aforementioned Articles 20.5.1 and 22.6 of the Code, could no longer be guaranteed. That is why the power to annul (Section 22 of the Framework Act) should be excluded, also in exceptional cases.

Finally, a comment could be made regarding Section 20(1) of the Framework Act, which prescribes an obligation for the non-departmental public body to provide information or to give access to all business data and documents to the Minister. It is conceivable that, in the context of the supervision by the Minister of Health,

Welfare and Sport, data on individual athletes must be provided by the Anti-Doping Authority. An example of this is supervision of the way in which the Anti-Doping Authority handles the data of athletes, for which purpose insight must be obtained into the data of an individual athlete on a random basis. In accordance with Sections 7 and 9 of the Personal Data Protection Act, the Minister may not use these personal data for other reasons than for supervision. This also links up with the reticent role the government takes in the area of doping tests; the government creates the framework for the effective and sound fight against doping in sport, while the sports organisations themselves arrange for the specifics of those frameworks by punishing anti-doping rule violations. In that way, the private life of, among others, athletes in respect of whom the Anti-Doping Authority has data or personal data is safeguarded as much as possible. The regime of the Non-Departmental Public Bodies Framework Act described above enables the Minister of Health, Welfare and Sport to supervise the Anti-Doping Authority effectively. In addition, a supervision arrangement will be drawn up in order to lay down the supervisory relationship between the Minister of Health, Welfare and Sport and the non-departmental public body in more detail. As a result, the political responsibility of the Minister in the area of the fight against doping can be given proper substance.

4.5 Relationship with other regulations

Regulations other than the Non-Departmental Public Bodies Framework Act, which will become applicable to the Anti-Doping Authority, include the Public Records Act 1995 [*Archiefwet 1995*]. Based on that Act, even after its establishment as a non-departmental public body, the Anti-Doping Authority must place and keep the archive documents in its care in a good, organised and accessible condition and arrange for the destruction of the archive records that could qualify for destruction (Section 3). Pursuant to Section 9:18 of the General Administrative Law Act [*Algemene wet bestuursrecht*] anyone furthermore has the right to request the ombudsman to institute an investigation in the way in which the Anti-Doping Authority has conducted itself towards that person or someone else in a specific circumstance (Section 1a(1), opening words and under (e), of the National Ombudsman Act [*Wet nationale ombudsman*]). In addition, the regime of legal remedies of the General Administrative Law Act will apply to the Anti-Doping Authority's decisions, in so far as they can be considered to be a decision within the meaning of Section 1:3 of the General Administrative Law Act. Finally, the Government Information (Public Access) Act [*Wet openbaarheid van bestuur*] also applies, so that the Anti-Doping Authority can be requested for information (Section 3(1)). In summary, it can be said that the performance of duties by the Anti-Doping Authority is not only be placed within the Framework Act, but also within public-law frameworks that ensue from other legislation that applies to administrative bodies.

5. The Anti-Doping Authority

5.1 Duties of the Anti-Doping Authority

5.1.1 To combat doping in sport

The general, overarching mission of the Anti-Doping Authority consists of combating doping in sport. This duty is a reflection of the social ideal which is already referred to above: fair and healthy sport. This ideal also forms the core of the rules that are enshrined in the Code in the context of the WADA.

5.1.2 To execute the doping control process

The general duties of the Anti-Doping Authority are supplemented by two more specific duties. Probably the most conspicuous activity of the Anti-Doping Authority consists of planning and executing the doping control process, for the purpose of determining whether the anti-doping rules have been violated. Athletes usually commit themselves to the anti-doping rules of the sports association they are affiliated with, which rules are based on the National Anti-Doping Rules. As a result of this commitment, which has a civil-law character, the athlete is obliged to comply with the anti-doping rules applicable to him or her. If the athlete fails to do so, he or she is in violation of the anti-doping rules. Title II of the National Anti-Doping Rules, which is based on the most recent version of the Code, lists various violations: presence in a sample, possession or use of prohibited substances or prohibited methods, inadequate cooperation or provision

of information, tampering or attempted tampering with any part of doping control, trafficking or attempted trafficking in any prohibited substances or prohibited methods, administration or attempted administration to any athlete of prohibited substances or prohibited methods, complicity, and prohibited association. At its core, doping control consists of taking and collecting urine samples and, in certain cases, blood samples from athletes. However, doping control also includes activities related to the taking and collection of those samples, such as selecting and identifying persons from whom samples of body material will be taken, planning the procedure to take samples of body material, taking and collecting samples of body material, analysing samples of body material, managing the results of the laboratory tests and participating in disciplinary proceedings.

In theory, it concerns a group of approximately 20,000 athletes that could be subjected to the doping control process; in practice, approximately 1200 athletes are subjected to the doping control process each year. Based on an analysis of the samples taken, it may be determined in disciplinary proceedings whether the anti-doping rules were violated, after which the sanctions included in the applicable anti-doping rules can be imposed.

5.1.3 Education

Another part of the duty to combat doping in sport consists of providing education to athletes and other persons involved in sport, and to the general public. In addition to the Anti-Doping Authority, sports organisations are also involved in this provision of education. The duty to provide education is closely related to the two other duties and is placed with the Anti-Doping Authority due to its expertise on this subject, as is the case in the situation that exists before this legislative proposal is turned into law. Subjects discussed during education meetings include the health risks of using doping, the rights and obligations of athletes, the doping control, arranging exemptions, the whereabouts regulation, and the risks of food supplements. In the recent past, the Anti-Doping Authority has also conducted various campaigns aimed at preventing doping in sport, including the campaign "100% Dope Free" for top athletes (www.100percentdopefree.nl). During so-called outreach events, the Anti-Doping Authority visits sports events and competitions and provides general information on doping to large groups of young talented athletes, their parents and their trainers or coaches. Another form of providing education consists of the so-called Doping Fan [*Dopingwaaier*], which includes key information on anti-doping rules, the WADA doping list, a list with frequently used medicinal products that are allowed, and an explanation of the doping control procedure (www.dopingwaaier.nl). By now, the Doping Fan is also available as an app for smartphones and tablets, with the support of the Ministry of Health, Welfare and Sport. This and other education activities by the Anti-Doping Authority will be initiated and continued after the legislative proposal enters into force. In the context of the Anti-Doping Authority's duty to provide education, please refer to the National Anti-Doping Rules, which are drawn up by the Anti-Doping Authority. In these National Anti-Doping Rules, the Anti-Doping Authority indicates how sports associations should draw up their anti-doping rules in accordance with the international rules as accepted in the context of WADA.

5.2 Powers of the Anti-Doping Authority

5.2.1 Powers to execute the doping control process

In order for the Anti-Doping Authority to perform its duties as described above properly, this legislative proposal assigns the powers required. Those powers relate primarily to the execution of the doping control process. This assumes the athlete agrees to commit himself or herself to anti-doping rules. Firstly, it concerns the handling of applications for medical exemption. An exemption is defined in the legislative proposal as "an exemption of a substance or method that is prohibited by or pursuant to anti-doping rules for the use for therapeutic purposes ". It is possible for an athlete to use a certain substance for medical reasons, which substance is prohibited based on anti-doping rules. In such a case, the Anti-Doping Authority may conclude that exemption from the prohibition may be granted in that specific case.

The second power consists of designating the athletes that form part of the group of top athletes. This limited group of top athletes come from sports that may be considered "doping sensitive" and are therefore subject to the whereabouts regime. In practice, this group consists of approximately 300 top athletes. Based on the whereabouts obligation (Section 2), these athletes must be able to provide

information about their whereabouts to the Anti-Doping Authority at all times and may particularly be subjected to doping tests both during and outside of matches and competitions. The Anti-Doping Authority manages its own group of top athletes, also indicated as registered testing pool. As soon as an athlete has been added to the registered testing pool, he will be informed of this in writing by the Anti-Doping Authority. In principle, only athletes that have been given a "top-athlete status" by NOC*NSF based on its regulations qualify, but in exceptional cases athletes without that status may also be added to the registered testing pool. These are athletes who, for example, are under specific suspicion or have been sentenced for an anti-doping rule violation before. The designation of athletes that form part of the group of top athletes must be considered to be a decision within the meaning of Section 1:3 of the General Administrative Law Act, for which the usual legal protection is available.

Other powers concern selecting and designating persons that will be called for testing, and taking, collecting and analysing body samples, and managing the results of the laboratory tests. As already described above, the powers are needed for the execution of the doping control process.

When the laboratory tests show a suspicion of the use of doping, the Anti-Doping Authority will submit the case to the sports organisation responsible. This organisation may then decide to initiate disciplinary proceedings against the athlete involved. Section 6(1)(f) of the legislative proposal authorises the Anti-Doping Authority to participate in those proceedings.

5.2.2 Processing personal data

Other powers assigned to the Anti-Doping Authority in this legislative proposal relate to the processing of personal data for the purpose of executing doping control. Here, too, an athlete must agree to commit himself or herself to anti-doping rules before the Anti-Doping Authority may exercise these powers. These powers include, first of all, the processing of personal data, including medical data. A special category of personal data consists of whereabouts information, which may be processed pursuant to the power that is included in Section 6(2)(b). The third power in the area of the processing of data consists of providing personal data, including medical data, to sports organisations for benefit of the execution of disciplinary proceedings. We already referred to the role of the Anti-Doping Authority in disciplinary proceedings that are initiated by sports organisations when a suspicion has arisen about the athlete involved having committed an anti-doping rule violation. Because personal data play an important role in this, the power to process data is expressly included in Section 6(2)(c) of the legislative proposal.

5.2.3 Performing intelligence & investigations activities

A separate power of the Anti-Doping Authority is to obtain and investigate information, including personal data, on possible anti-doping rule violations. These activities are generally referred to as "intelligence & investigations activities" and are closely related to the performance of the first duty, namely the fight against doping in sport. The basis for this duty is in the Code, which provides – in brief – that anti-doping organisations obtain, assess and process intelligence on possible anti-doping rule violations from all available sources (Article 5.8.1). An example of the intelligence that may be obtained in the context of such activities is reports in the media, including social media, on noteworthy performances of athletes or teams. This does not only concern intelligence on athletes, but also intelligence on all parties that may be involved, such as sports physicians and assistants.

5.2.4 Cooperation with other government agencies and anti-doping organisations

In order to enable the Anti-Doping Authority to properly perform its duties, this legislative proposal also proposes to include the required basis for the cooperation between the Healthcare Inspectorate on the one hand, and the Anti-Doping Authority on the other hand. The Anti-Doping Authority and customs will also work together. This cooperation will find its basis in the General Customs Act [*Algemene douanewet*]. Section 1:33(1) and (3) of the General Customs Act will provide the basis for exchange of the required intelligence with the Anti-Doping Authority. However, this requires that the Anti-Doping Policy (Implementation) Act is included in the appendix of the General Customs Act as referred to in Section 1:1 of that Act. An order in council will be made pending for this.

The reason for the exchange of data with the organisations involved is that, during their supervisory activities, these organisations can be confronted with

intelligence that is also relevant for the performance of duties of another organisation. For example, during the performance of supervision of compliance with the Medicines Act [*Geneesmiddelenwet*] the Healthcare Inspectorate may come across a batch of unregistered medicinal products, which are suspected to be used as doping. In those circumstances, it is desirable that the Inspectorate reports this to the Anti-Doping Authority. When it concerns cooperation with customs, it involves the situation in which it finds a batch of substances that are indicated to be doping or which it suspects to be doping. In this case it is also desirable that the customs information regarding its discovery can be shared with the Anti-Doping Authority, so that it can use this information to determine any anti-doping rule violations. By allowing these organisations to cooperate efficiently, the government as a whole can better supervise compliance with laws and regulations.

In addition, an assessment is being made to what extent cooperation between the Anti-Doping Authority and the Public Prosecution Service is desirable, with a view to the performance of duties by these organisations. In the context of the effective fight against doping, criminal-law data may play an important role. Criminal-law data are personal data or data regarding a legal entity obtained in the context of a criminal investigation and which the Public Prosecution Service processes in a criminal file or by automated means. As indicated in the answer to questions of the Members of Parliament Bruins Slot (Christian Democratic Alliance, CDA) and Van Dekker (Labour Party, PvdA) (2015Z04351), which were sent to the House of Representatives on 17 April 2015, it concerns data on violations (or possible violations) of the Medicines Act. Examples are the unlicensed production or introduction into the market of medicines that can be designated as doping. These are economic offences that can be prosecuted. Data on such violations (or possible violations) are therefore important to both the Public Prosecution Service and the Anti-Doping Authority.

An effective anti-doping policy requires not only good cooperation with other administrative bodies, but also with anti-doping organisations abroad. Because top athletes participate in sports events across the world, the fight against doping has pre-eminently become an international matter. That is why it is important that the Anti-Doping Authority can cooperate with partner organisations abroad, for example international sports federations or foreign "Doping Authorities". A statutory power is included also for this purpose.

5.3 Comparison of the position of the Anti-Doping Authority with foreign anti-doping organisations

The international conventions in the area of the fight against doping (discussed in section 2) and the Code of the World Anti-Doping Agency create a framework for the anti-doping policies in countries across the world. The interpretation of those frameworks is left to the countries themselves. In that connection, it is interesting to briefly discuss the positioning of national anti-doping organisations in the countries surrounding us. The German *Anti-Doping Gesetz* contains a number of penalisations (custodial sentences and financial penalties) for anti-doping rule violations. The prosecution is left to the authorities of the states. Furthermore, the Act contains the power (not an obligation) for judicial authorities and the Public Prosecution Service to provide personal data to the *Stifting Nationale Anti Doping Agentur Deutschland*, the German national anti-doping organisation, which is a foundation under civil law. In addition, the Act contains a basis for the processing of personal data, including special personal data, by the aforementioned foundation. That processing also includes the provision of doping results to other national and international anti-doping organisations.

The Flemish Anti-Doping Decree forms the implementation of the WADA rules in the Flemish legislation and contains detailed public-law provisions on combating doping, including obligations for athletes, rules with regard to approved medical officers, the list of prohibited substances, rules of evidence and sanctions. Tests can only be performed under the responsibility of a medical officer approved by the government.

Such a public-law regulation does not exist in the United Kingdom. UK Anti Doping, the British national anti-doping organisation, is a private organisation that is also funded by the British government as a non-departmental public body. In the United Kingdom, UK Anti Doping performs the doping tests based on private anti-doping rules.

In comparison with the aforementioned, brief descriptions of the national implementation of the anti-doping policies in Germany, Flanders and the United

Kingdom, this legislative proposal, establishing the Anti-Doping Authority of the Netherlands as a non-departmental public body, takes up a middle position. The middle position means that the legislative proposal serves to strengthen and supplement the anti-doping policy and the anti-doping rules of sports organisations. In Belgium and Germany, the government goes further than creating the required frameworks; the fairly detailed public-law regulations also fill in those frameworks. In that sense, after the legislative proposal has entered into force, the Anti-Doping Authority's position will more closely resemble that of the British anti-doping organisation. However, an important difference with the United Kingdom is that it has no specific anti-doping legislation; the anti-doping rules are entirely private-law by nature.

6. Rights and duties of the athlete

The national and international anti-doping policies endeavour to combat doping in sport. That is why it is important that athletes ensure that they comply with the anti-doping rules that are applicable to them. That is the core of the obligation that is imposed on athletes (Section 2(1)). In addition, the legislative proposal contains a more specific and heavier obligation for athletes that belong to the group of top athletes (also referred to as the registered testing pool). This is a group of athletes at the highest level, in respect of whom larger doping risks exist and who therefore have to provide their whereabouts information to the Anti-Doping Authority. Those whereabouts information enable doping inspectors to perform unexpected tests with the athlete in question in order to ensure better compliance with the anti-doping rules.

The legislative proposal also contains a right to object. This right means that the performance of duties by the Anti-Doping Authority may in no case lead to a person being coerced physically to tolerate the taking and collecting of a body sample from him or her. The provision intends to protect the bodily integrity of a person who is subjected to doping control. However, this regulation does not affect the application of other rules, in particular the anti-doping rules to which the person in question is committed. In specific terms, this means that a person's refusal to cooperate in the taking or collecting of a body sample is seen as an independent anti-doping rule violation, which will in principle lead to exclusion of that person. For a further explanation on the constitutional aspects of the taking of body samples, we refer to section 7.3.1 of this explanatory memorandum.

The shared responsibility of the government and sports organisations in the area of the fight against doping, as described above, is also apparent in respect of these rights and obligations. Where the general obligations and duties have been included in the Act, it remains important that the specifics of these obligations are described in the anti-doping rules of sports organisations. Those rules describe in detail which acts (or which omissions to act) are seen as an anti-doping rule violation. Ultimately, those details are based on the rules drawn up on that subject in WADA context and are enshrined in the Code. In order to retain this division of responsibilities between the government and the sports world, it was decided in this legislative proposal not to include the anti-doping rules in public-law rules. This would incorporate the detailed obligations athletes must currently observe, based on the anti-doping rules of sports associations, in statutory provisions and would ensure that violation of these rules can also be punished by measures to be laid down in law. The authorities of the Anti-Doping Authority and the disciplinary proceedings would also have to be formulated by law. As a result of such a fully public-law regulation, the starting principle that the fight against doping in sport is to an important extent the responsibility of the sports world could be relinquished. The government places great store by the division of responsibilities with regard to the anti-doping policy and therefore considers it to be undesirable to remove this responsibility from sports organisations.

7. Constitutional aspects

7.1 Introduction

The assignment of duties to the Anti-Doping Authority as a non-departmental public body also has constitutional aspects. In principle, but not exclusively, it concerns the processing of personal data. The fundamental rights that apply are laid down in the Constitution and the Personal Data Protection Act, the European Convention on Human Rights (ECHR; Treaty Series 1951, 154), the Charter of Fundamental Rights of the European Union and the International Covenant on

Civil and Political Rights (ICCPR; Treaty Series 1969, 99). The compatibility of this legislative proposal with these fundamental rights is discussed below.

7.2 Justification of the processing of personal data

7.2.1 Applicable law

Section 10(1) of the Constitution provides: "Everyone shall have the right to respect for his privacy, without prejudice to restrictions laid down by or pursuant to Act of Parliament". The Constitution therefore contains a formal requirement for the permissibility of a specific restriction of fundamental rights, namely the inclusion of that restriction in a universally applicable provision. The Constitutional provision has been specified in, among other things, the Personal Data Protection Act, so that this legislative proposal must be tested in relation to that Act. In addition, pursuant to Article 8(1) of the ECHR, everyone has the right to respect for his private and family life, his home and his correspondence.

7.2.2 Nature and scope of the processing of data

The personal data that are processed in the context of the performance of duties by the Anti-Doping Authority include both "ordinary" personal data and "special" personal data. The special personal data are, without exception, data regarding health (Section 21 of the Personal Data Protection Act). The personal data of athletes that are processed in the context of the execution of the doping control process are the name, address, place of residence, date of birth, sex, nationality, branch of sport, contact details and medical data (test results), including data regarding the use of medicinal products. In some cases, it also concerns data on any physical or mental limitations, in so far as the athlete lists these.

In the context of the whereabouts regulation, the following data and/or whereabouts information of athletes are processed by the Anti-Doping Authority: name, address, place of residence, date of birth, sex, nationality, branch of sport, travel and accommodation details, visual material and contact details.

For the execution of the intelligence & investigations activities, name, address, place of residence, contact details, travel and accommodation details, date of birth, nationality, sex, branch of sport and, in some cases, the use of medicinal products and other relevant data are processed. With the exception of the data on the use of medicinal products, this not only concerns the data of athletes but also the data of physicians and "entourage", i.e. assistants, managers, parents, etc. of athletes, which may come from other countries or from tip-offs.

Finally, to keep medical exemptions (the athlete's use in the context of medical treatment of substances that are on the list of prohibited substances) up to date, the following data of the athlete will be processed: name, address, place of residence, date of birth, sex, nationality, branch of sport, contact details, medical data, including the disorder, diagnosis, manner of treatment and medication. In respect of the treating physician's, the name, address, place of residence, contact details and job title are noted.

7.2.3 Justification and purpose of the processing of data

The purpose of the processing of the categories of personal data described in section 7.2.2 is the effective fight against doping in sport, with due observance of the health and privacy of athletes. This purpose is enshrined in Section 6(2) by the reference to the execution of the doping control process. In order to achieve this purpose, the Anti-Doping Authority will be granted the powers that are listed in section 5.2 of this explanatory memorandum. Pursuant to Section 9(1) of the Personal Data Protection Act, the personal data may only be used for that purpose. Moreover, the personal data may not be stored in a form that can be traced back to a person for a period of time that is longer than necessary for the processing of that purpose (Section 10(1) of the Personal Data Protection Act). The justification for the processing of the personal data is, as said before, laid down in Section 8(e) of the Personal Data Protection Act. That section provides that personal data may be processed if the processing of data is required for the proper performance of a public-law duty by the administrative body in question or the administrative body that receives the data. The public-law duty referred to is laid down in Section 5 of this legislative proposal. The reliance on Section 8(e) of the Personal Data Protection Act therefore also means that the processing of data by the Anti-Doping Authority may only relate to the public-law duty.

Other obligations that ensue from the Personal Data Protection Act include the obligation of confidentiality (Section 12) and the obligation to execute appropriate technical and organisational measures to secure personal data against loss or

any form of unauthorised processing (Section 13). It can be added that the Anti-Doping Authority is obliged to inform the data subject of the commencement of the processing of data, to notify the data subject of the data that are processed regarding that person, and to respond to requests to change the data of the data subject (Sections 33, 34, 35 and 36 of the Personal Data Protection Act). Some of the categories of personal data described in section 7.2.2 that the Anti-Doping Authority processes in the fight against doping in sport must be considered to be "special personal data", because it concerns data that relate to the athlete's health. Chapter 2, section 2 of the Personal Data Protection Act applies to those data. That section prohibits the processing of special personal data (Section 16), but also provides grounds for exemption (Sections 21 and 23). The types of data that are processed by the Anti-Doping Authority and that can be considered to be special personal data are the following: firstly medical data, including athletes' examination results of doping tests; secondly data on the use of medicinal products that are obtained in the context of the intelligence & investigations activities; thirdly medical data that are provided by the athlete in order to acquire a medical exemption. These categories are subject to two different grounds for exemption.

For the second category, in some cases the data are clearly made public by the athlete involved, for example statements in the media (social media or otherwise) on the use of medicinal products that are collected by the Anti-Doping Authority in the context of the intelligence & investigations activities. The initiative for disclosure of these data is therefore expressly with the athlete himself or herself. In those cases, the ground for exemption of Section 23(1)(b) applies. However, in some cases the disclosure will not be the choice of the athlete himself or herself, but of third parties. In those cases, the basis for the processing of personal data will be found in the legal basis and the related major social interest that apply here. This is explained further below.

With regard to those cases and personal data from the third category (data related to medical exemptions), we can refer to the opinion of the Article 29 Working Party on consent for the processing of personal data granted by top athletes, in particular the opinion that there is a risk when using "express consent" as a basis for the processing of those personal data. To top athletes, the importance of participation in a match or competition is so great that it cannot be said that the consent has been given freely, according to the Article 29 Working Party. After all, if the athlete uses a substance, which is in principle prohibited, to control a disease or condition, so for a medically necessary purpose, it is necessary for him or her to acquire a medical exemption (and therefore to submit medical data) in order to be able to participate in the match or competition. That is why, with regard to the first and third category of special personal data, the processing of data is required pursuant to Section 23(1)(f) with a view to a major general interest, appropriate safeguards are offered to protect the athlete's privacy and this is provided for by law or the Dutch Data Protection Authority has granted an exemption. Section 6(2)(a) of this legislative proposal offers the required legal basis for the processing of personal data. The major interest that necessitates the processing of the special personal data in the cases described above is the fight against doping in sport. In response to the advice of the Dutch Data Protection Authority for further motivation, this interest should be designated as "major" in the opinion of the undersigned. This may be derived from the social indignation that arises if it becomes apparent that an individual athlete or athletes in general have improved their performance by using doping. In addition, and perhaps more importantly, the possible damage to the health of athletes as a result of the use of doping means that the fight against doping must be designated as a major social interest. These two elements together form the major social interest. Doping tests, which without exception are accompanied by the processing of special personal data, and the intelligence & investigations activities in a number of cases, form an essential part of the fight against doping, because these persons can play an important role (and, in practice, often do) in the use of doping by an athlete. It then concerns not so much doping use by the entourage itself, but their role in the provision of doping to the athlete. That is why the necessity criterion has also been met in respect of the intelligence & investigations activities. The same applies to the provision of personal data to, for example, sports organisations in a specific case in which an athlete is suspected of using doping, to which the Dutch Data Protection Authority also refers in its advice. In this connection, the necessity criterion is met, because the sports organisation itself ultimately initiates the disciplinary proceedings against the athlete involved. In this case, special personal data are essential due to their

function as evidence. In other words, the interest cannot be served with a less far-reaching restriction of the privacy of the athlete, so that the requirements of proportionality and subsidiarity are also met. The processing of data referred to here, firstly means the processing of medical data and results of the doping tests, which in a certain sense forms the core of the policy of the fight against doping and to which society attaches a great deal of value. However, this also includes the fact that athletes can obtain an exemption for the use of substances that are prohibited in principle, but of which the use by the athlete in question is allowed because his or her health requires this. Article 4.4 of the Code refers to so-called "therapeutic use exemptions", being the medical exemptions. This possibility for exemption is important with a view to a reasonable treatment of the athlete; the lack of an exemption scheme would lead to athletes not being allowed to use a prohibited substance in any case, so not even if the substance is used on medical grounds. The appropriate safeguards to protect the privacy of the athlete can be found in the proposed Section 13(1) and relate to the conditions subject to which an athlete's special personal data can be processed. This processing of data may not take place for other purposes than for the execution of the doping control process for the data subject. This means that it is actually necessary for the Anti-Doping Authority to process the data regarding, for example, the athlete's use of medicinal products. That reason may be the request for medical exemption by the athlete, or the fact that the data subject practises sport at a very high level. In addition, it is proposed to provide the processing of personal data with additional and appropriate safeguards. Those safeguards consist of excluding personal data from the obligation for the non-departmental public body to provide information or to give access to all business data and documents to the Minister. Moreover, the Non-Departmental Public Bodies Framework Act contains the option of setting policy rules for the performance of duties by the Anti-Doping Authority. Finally, we can refer to the proposed Section 13(3), which includes a basis to set further rules by order in council with regard to requirements for the processing of personal data by the Anti-Doping Authority.

7.2.4 Provision of personal data to sports organisations

We indicated above that the Anti-Doping Authority plays an important role when a sports organisation initiates disciplinary proceedings against an athlete who is suspected of having committed an anti-doping rule violation. In this connection, the question may arise to what extent there is a basis at that sports organisation for the processing of personal data. This basis is built on "consent". In the opinion of the government, the risk identified by the Article 29 Working Party with regard to the reliability of consent as basis for the processing of personal data does not exist in the relationship between the athlete on the one hand and a sports association or other sports organisations on the other hand. After all, that relationship has a different, more horizontal character. This means that, in principle, there is no unacceptable level of inequality of power between them; after all, these are private-law relationships in which the athlete must be deemed to be able to freely give consent for the processing of personal data. This reasoning finds support in recital 43 of the new General Data Protection Regulation, which states "consent [may] not be a valid legal ground for the processing of personal data in a specific case if there *is a clear imbalance between the data subject and the controller, particularly when the controller is a government agency*, and this makes it unlikely that the consent has been given freely in all circumstances of that specific situation".⁷ In the government's opinion, the imbalance referred to in this consideration does not exist between athletes and sports associations or other sports organisations. In contrast with the vertical relationship between the athlete and the Anti-Doping Authority, we therefore do not consider it necessary to include additional statutory safeguards for the relationship between the athlete and his or her sports association.

7.2.5 Provision of personal data to foreign anti-doping organisations

As was discussed in section 5, it is proposed to also give the Anti-Doping Authority the power to provide information to foreign anti-doping organisations. To do so, an international system for the exchange of doping-related information ("Anti-Doping Administration and Management System", hereinafter: ADAMS) will

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJEU 2016, L119).

be used. ADAMS is managed by the World Anti-Doping Agency that is established in Quebec, Canada, and is described in the Code as a "web-based database management tool for data entry, storage, sharing, and reporting designed to assist stakeholders and WADA in their anti-doping operations in conjunction with data protection legislation".⁸ The system's users are laboratories, athletes, athletes' representatives, national and regional anti-doping organisations (including the Anti-Doping Authority of the Netherlands), international and national sports federations and national Olympic and Paralympic committees. Both "ordinary" and "special" personal data within the meaning of the Personal Data Protection Act would qualify for transferring abroad. In addition to name, address, place of residence, date of birth, sex and sport, the ordinary personal data of athletes also include whereabouts information. Special personal data include data on the use of medicinal products in the context of a medical exemption that may or may not have been granted, and data on blood and urine levels that form part of the so-called biological passport.

The rules applicable for the transfer of personal data to third countries (outside the European Union) originate in chapter IV of Directive 95/46/EC.⁹ This chapter has been implemented in chapter 11 of the Personal Data Protection Act. The follow-up question is to what extent the use of ADAMS meets these requirements. A distinction should be made here between transferring to WADA and transferring to foreign third parties via WADA. With regard to transferring data to WADA, which is established in Canada, it can be noted that the requirements of an "appropriate level of protection" have been met. This is apparent from decision 2002/2/EC of the European Commission.¹⁰ The provision of data to ADAMS therefore meets the requirements of the directive.

In addition to WADA, other parties have linked up with ADAMS. Those organisations can be anywhere in the world outside the European Union and will receive the data provided by the Anti-Doping Authority via WADA. There will usually be no decision of the European Commission available for the destination of the information in question, based on which an "appropriate level of protection" can be assumed. However, the transfer of personal information can be justified based on a major social interest (Section 77(1) of the Personal Data Protection Act).

The government believes that there actually is a major social interest here. In doing so, it differs in opinion with the Article 29 Working Party, which identifies a legal risk here.¹¹ Moreover, the Working Party states that this requires an express legal basis. As said before, that legal basis forms part of the legislative proposal. The major social interest that is present here consists of the fact that top sport has a pre-eminently international character, as already stated above. Top athletes participate in sports events across the world and information regarding those athletes, such as medical exemptions, must be present at those sports events. Without providing those data to partner organisations abroad, doping in sport cannot be combated effectively. The major interest of clean sport, both from the view of fair play and from the view of public health, means that, in the opinion of the government, the requirement of a "major social interest" has been met. This reasoning finds support in the aforementioned General Data Protection Regulation 2016/679 of the European Union, which was adopted in the spring of 2016 and will form the future legal framework for the processing of personal data. That regulation refers to, among other things, "data transfers required and necessary for important reasons of public interest [...] in order to reduce and/or eliminate doping in sport".¹²

However, it is important that the importance of the privacy of athletes is not forgotten in that transfer of personal data. That is why the legislative proposal contains restrictions to the provision of those data. Those restrictions relate to the necessity of the provision and the access to the data provided. This restricts the

⁸ WADA Code 2015, annex 1.

⁹ Directive (EU) 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJEU L281).

¹⁰ Commission Decision of 20 December 2001 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided by the Canadian Personal Information Protection and Electronic Documents Act (OJEU 2002, L 2).

¹¹ Article 20 Data Protection Working Party, Opinion 4/2009 (6 April 2009, WP162), page 14.

¹² Introductory recital 112.

limitation of the athlete's privacy to what is strictly necessary to perform the doping control process for that athlete.

7.2.6 Admissibility of the data processing under Article 8 of the ECHR

Pursuant to Article 8(1) of the ECHR, "everyone has the right to respect for his private and family life, his home and his correspondence". The various activities of the Anti-Doping Authority relate to the processing of personal data and therefore fall under the scope of this provision. The limitation of the right laid down in Article 8(1), will therefore have to comply with Article 8(2), of the ECHR before it becomes admissible. This means that the limitation has been provided for by law, serves a legitimate purpose and complies with the requirement of "necessity in a democratic society". Firstly, the limitation of the fundamental right has been provided for by law, because the basis for the processing of data has been included in this legislative proposal. Secondly, the restriction serves a legitimate purpose, which in this case consists of the protection of health or public morality. And finally, the limitation can also be designated as "necessary in a democratic society". The "urgent social need" to limit the fundamental right consists of the major social interest that is attached to a doping-free sport, as already indicated above. The requirement of proportionality is also met, because only those data are processed that are required to execute the doping control process. Moreover, for the data on the athlete's entourage that must be collected in the context of the intelligence & investigations activities there is no alternative way that is less probing for the data subjects to determine whether these persons play a role in the use of doping by an athlete. In other words: the processing of data is an important condition for being able to execute the doping control process effectively and fairly.

7.3 Justification of other limitations of fundamental rights

7.3.1 Taking and collecting body samples

Pursuant to Section 11 of the Constitution, everyone has the right to physical integrity, subject to limitations to be laid down by or pursuant to law. The ECHR does not contain such a provision. Moreover, the taking and collecting of body samples must be considered to fall outside the scope of the prohibition to subject people to torture or to inhuman or degrading treatment or punishment, as laid down in Article 3 of the ECHR. This also applies to Article 7 of the ICCPR. In other words, the act that consists of taking and collecting of body samples must only be tested in relation to Section 11 of the Constitution. As evidenced by that provision, the right to physical integrity may be limited by limitations set by or pursuant to law. That limitation has been included in this legislative proposal by assigning the duty to execute the doping control process to the Anti-Doping Authority. The doping control process includes, among other things, the taking and collecting of samples, which relates to urine and, in some cases, blood or other body material (such as a mouth swab or a hair) of athletes. This enables the collection of data, which can be used to determine whether doping has been used or not. In addition, attention should be drawn to the right to object included in this legislative proposal, which was already discussed in section 6 of this explanatory memorandum. Because a person's refusal to participate in the taking or collecting of a body sample is seen as an independent anti-doping rule violation which will, in principle, lead to exclusion of the athlete, the right to physical integrity will be limited, despite the athlete's right to object. This limitation can be justified due to the fact that there is a legal basis for that limitation, namely in this legislative proposal. As a result, this limitation of fundamental rights complies with the requirements of Section 11 of the Constitution. The taking and collecting of samples is furthermore a limitation of the right to protect a person's privacy, as laid down in Article 8 of the ECHR. In addition to the presence of a legal basis, this limitation also serves a legitimate purpose: the protection of health or public morality. In addition, this limitation is also required for a democratic society. The required urgent social need consists of the desire for doping-free sport. Finally, the limitation is proportional, because a possible anti-doping rule violation by an athlete cannot be determined in another, less far-reaching way than by taking and collecting samples.

7.3.2 Collecting and processing whereabouts information

However, the collection and processing of whereabouts information of athletes that are part of the registered testing pool do constitute a limitation of the right to protection of a person's privacy, other than only due to the data processing

component. After all, an athlete's obligation to provide his or her whereabouts information and contact details can be seen as a limitation of his or her freedom. Here, too, the limitation of Section 10 of the Constitution, in so far as it concerns another limitation than the processing of personal data, has been formally laid down in the law, namely this legislative proposal. This means that it meets the formal requirement for the limitation and that it complies with the Constitution. With regard to Article 8 of the ECHR, the obligation for athletes that form part of the registered testing pool to provide whereabouts information and contact details must be tested separately from the aforementioned assessment framework for the limitation of ECHR rights. The limitation of the right laid down in Article 8 has been provided for by law, because this obligation is included in Section 2(2) of this legislative proposal. As the obligation has also been included in the National Anti-Doping Rules (Article 6.2) and the Code (Article 6.5) and the athletes in question are also informed of the fact that they are obliged to provide the whereabouts information, the government believes that the requirements of foreseeability and accessibility of the legal basis have been met. The legitimate purpose served by the whereabouts obligation consists of the protection of health or public morality, which can cover the fight against doping. Finally, the limitation can also be designated as "necessary in a democratic society". There is an "urgent social need" to limit the fundamental right because of the great value society attaches to doping-free sport and because of the recognition that a partial limitation of the freedom of movement of athletes forms part of that. The limitation is also proportionally commensurate with the goal that is to be achieved. After all, without the whereabouts obligations it would not be possible to perform effective doping tests; it would only be possible to perform doping tests that have been announced in advance, which athletes could evade or in which athletes could conceal any potential use of doping.

7.4 Other remarks of the Article 29 Working Party

In addition to the remarks already discussed above, I refer to two points of criticism the Article 29 Working Party expressed on the processing of personal data in the context of the Code. It concerns the disclosure of sanctions that have been imposed, some aspects of the whereabouts regime discussed above, and the retention period for the processed data.

Pursuant to Article 14.3 of the Code, disclosure of imposed sanctions for anti-doping rule violations is mandatory. In so far as the publication of an imposed sanction is necessary in order to prevent an athlete from concerning himself or herself with organised sport in another role or in another discipline, the Working Party believes that there are less drastic means available than publication of the sanction on the internet. By way of example, the Working Party refers to a certificate of good conduct or something comparable. If this does not suffice, consideration could be given to sharing the sentence with a limited number of persons for whom it is relevant to know the imposed sanction. In so far as disclosure of the imposed sanction is required for deterrence, the Article 29 Working Party believes that the disclosure of *all* sanctions on the internet does not meet the requirement of necessity. It points out three matters in particular. Firstly, the necessity for disclosure must be considered on a case-by-case basis and depend on, among other things, the seriousness of the anti-doping rule violation, the number of violations, the level of the athlete, the minority or majority of the athlete, whether there has already been attention in the media for the case and the consequences of the sanctions for the results of competitions and rankings. Secondly, the deterring effect to other athletes can also be achieved by means of anonymous disclosure of sanctions. Thirdly, the disclosure of sanctions via the internet forms a larger infringement of privacy than disclosure via offline means, according to the Working Party.

In addition, the Article 29 Working Party rightly points out that the obligation to provide whereabouts information must comply with the requirements of necessity and proportionality. This means, first of all, that only that whereabouts information of athletes may be collected of whom there is a risk that they are using doping, i.e. top athletes. The obligation to provide personal data on regular activities other than competitions and training is disproportionate when it is imposed on athletes at a lower level than the level of top sport. Given the fact that in cases of "no advance notice-testing" a doping control officer aims to visit the athlete between 7 a.m. and 10 p.m., the question arises why the athlete's whereabouts have to be stated "for every day during the following quarter" (Article I.3.1(d) and (e), of the International Standard for Testing). Athletes must also be clearly informed on the

question of whether the provision of data is optional or required and on the consequences of failure to comply with these rules, according to the Working Party.

Finally, the Article 29 Working Party questions to relevance and necessity of the retention periods of personal data, which are often eight years, because that has been determined by WADA as limitation period. The Article 29 Working Party believes that a limitation period of eight years (which has been set at ten years in the WADA Code by now) is not proportional in all cases. That proportionality can depend, among other things, on the type of anti-doping rule violation, according to the Working Party. In so far as it concerns whereabouts information, the Working Party alleges that this information is used to support the planning and performance of doping tests. After taking the body sample, the information could be destroyed. This has two exceptions, according to the Working Party, namely when an athlete does not comply with his obligation to provide his or her whereabouts information or when he or she misses a doping test. In those cases, the retention period of 18 months (by now changed by WADA to 12) is necessary, because three violations of the whereabouts obligation or three missed doping tests within a period of 18 (now: 12) months is designated as an anti-doping rule violation, or a suspicion of an anti-doping rule violation. In so far as it concerns personal data on sentences, a retention period of eight years (as said before, by now set by WADA at ten years) is indeed necessary. However, according to the Article 29 Working Party it is not necessary to retain related data, such as documentation to support medical exemptions or doping suspicions that have led to acquittal.

These risks have been identified by the Article 29 Working Party. Although the Working Party is an important advisory body in the area of the processing of personal data in the context of the European Union, in the end only the Court of Justice of the European Union can authoritatively test to what extent these specific provisions of the Code can be united with the European rules in the area of privacy and data processing. When the Court gives its decision in the matter, the Anti-Doping Authority obviously has the duty of complying with this interpretation of the principles of necessity and proportionality. For these cases the legislative proposal includes a basis to set further rules by order in council, if there is reason to do so (Section 13(3)). However, at this time there is no need for such rules.

7.5 Admissibility of the data processing and other limitations of fundamental rights under Article 17 of the ICCPR

Pursuant to Article 17(1) of the ICCPR, "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence [...]". With reference to what has been stated above regarding the formal-legal basis of the processing of personal data, the taking and collecting of body samples and the whereabouts regime, the interference in the private life of athletes is not random or unlawful and therefore is in agreement with Article 17(1) of the ICCPR.

7.6 Conclusion

In view of the above, it can be concluded that the legislative proposal is in agreement with the fundamental rights, in particular those of athletes.

8. Consultation

*8.1 Anti-Doping Authority and NOC*NSF*

The legislative proposal has been created in close cooperation with the Anti-Doping Authority and NOC*NSF. These parties are currently also being consulted on the implementation of the legislative proposal in practice, after it has turned into law.

8.2 Dutch Data Protection Authority

Pursuant to Section 52(1) of the Personal Data Protection Act, the legislative proposal has also been submitted to the Dutch Data Protection Authority (hereinafter: the Dutch DPA). The Dutch DPA issued advice on 8 September 2015. In its advice, the Dutch DPA makes four recommendations. Firstly, the Dutch DPA requests a further substantiation of why the duties assigned to the

Anti-Doping Authority have a public or public-law character. The Dutch DPA refers to the fact that an athlete's commitments to anti-doping rules have a civil-law nature, as opposed to a public-law nature, and to the fact that the Anti-Doping Authority is positioned between the government and the sport. These facts, which remain current after this legislative proposal will have turned into law, seem to be at odds with the public character of the interest that is served with this legislative proposal, as suggested by the Dutch DPA. As was argued in sections 4.1 and 4.2 of this explanatory memorandum, and as the Dutch DPA rightfully notes, the public interest, which will be represented pursuant to this legislative proposal by the Anti-Doping Authority, consists of fair play and the athletes' health and privacy. The designation of these interests as "public" justifies government intervention, of which this legislative proposal is a consequence. Although it is the government's duty to create the right frameworks for effectively combating doping in sport, with due observance of the athletes' privacy, sports organisations also have a responsibility. Experience shows that sports organisations also take this responsibility seriously, as is shown from the existing anti-doping rules and the cooperation with the Anti-Doping Authority. Against that background, the link to the existing civil-law commitments to anti-doping rules and to the positioning of the Anti-Doping Authority between the government and the sports world is justified. In this way, with the joint efforts of the government, in particular the Anti-Doping Authority, and the sports world, doping in sport can be combated. Secondly, the Dutch DPA recommends further substantiating of the necessity of the proposed Section 6(2)(b) in a persuasive manner from the perspective of the required "major general interest" pursuant to Section 23(1)(f) of the Personal Data Protection Act. This recommendation has been followed in section 7.3.2 of this explanatory memorandum. Thirdly, the Dutch DPA notes that the criticism, which was made by the aforementioned Article 29 Working Party on the WADA Code in respect of the proportionality and subsidiarity of the infringement(s) of the privacy of athletes, should be discussed in more detail. This has been complied with in section 4 of this explanatory memorandum, in particular in section 7.4. According to the Dutch DPA, insight must also be provided in the considerations to refrain from having national legislation offer better, appropriate safeguards for the protection of the privacy of athletes. The Dutch DPA rightfully points out the points for attention that it has brought forward in the two recommendations from 2008 and 2009 and in a letter from 2013.¹³ These recommendations have already been referred to in section 1.1 of this explanatory memorandum. In essence, a right balance must be found between, on the one hand, the effective combating of doping in sports and, on the other hand, the protection of the privacy of athletes. The undersigned believe that this balance is found in this legislative proposal, by offering a clear public-law framework within which the doping control process can be executed. That framework furthermore consists of the Personal Data Protection Act, with all safeguards for the processing of the personal data that form part thereof. Furthermore, in response to the recommendation by the Dutch DPA it was chosen to include a basis for setting further rules by order in council on the requirements the Anti-Doping Authority must comply with in the processing of personal data, if there is reason to do so in the future. Fourthly, the Dutch DPA recommends denominating the obligations that are imposed on the Anti-Doping Authority in the Code, in so far as those obligations relate to the exchange of data with other organisations. In this recommendation, the Dutch DPA also requests a discussion of those requirements of necessity due to a major general interest of those obligations, including the proportionality and subsidiarity to be able to serve that interest. In this connection we can refer to Article 20.5.3 of the Code, which instructs the Anti-Doping Authority "to cooperate with other relevant national organizations and agencies and other Anti-Doping Organizations". Contrary to what the Dutch DPA appears to assume, the reference to the Code in Section 5(2) of this legislative proposal does not contain an expansion of the duties that are assigned to the Anti-Doping Authority. However, the reference to the Code ensures that the Anti-Doping Authority has the duty of performing the statutory duties in accordance with the Code and is thus rather a limitation of that performance of duties. Another limitation consists of the Anti-Doping Authority's obligation to comply with the applicable privacy law, in particular the Personal Data Protection Act. The cooperation with other relevant national organisations, to which Article 20.5.3 of the Code refers, can result in the provision of personal data to other anti-doping organisations and sports

¹³ Letter dated 5 March 2013 of the Article 29 Working Party to WADA, Ares(2013)289160.

organisations. The legal basis for this lies in Section 6(2)(c) and Section 12(1) and (2) of this legislative proposal. The necessity of this data processing ensues from the fact that the Anti-Doping Authority has been given the statutory duty to execute the doping control process. This process also includes advising the relevant sports association that is considering initiating disciplinary proceedings against an athlete under suspicion. It is logical that this concerns personal data, as they relate to the athlete who is under suspicion. Without such provision of data the fight against doping in sport is impossible, because the data are required for the sports association's consideration of whether to initiate disciplinary proceedings or not. Furthermore, the provision of data is proportional, because only relevant data will be provided. The request to explain the requirements of necessity due to a major general interest has been followed in section 7.2.3 of this explanatory memorandum.

8.3 Netherlands Court of Audit

Pursuant to Section 96(1) of the Government Accounts Act 2001 [*Comptabiliteitswet 2001*], the Netherlands Court of Audit [*Algemene Rekenkamer*] has been requested to issue advice. In that advice, which was issued on 14 September 2015, the Netherlands Court of Audit makes two recommendations. Firstly, it recommends to elaborate further on the general frameworks for supervision and accountability of the Non-Departmental Public Bodies Framework Act in a supervision schedule for the Anti-Doping Authority. This recommendation will be followed. At the moment, discussions are taking place with the Anti-Doping Authority and NOC*NSF on the implementation of the legislative proposal after it has turned into law. The implementation of the supervision of the Anti-Doping Authority will also receive attention in those discussions. Furthermore, the Netherlands Court of Audit requests a clarification of how the National Anti-Doping Rules fit within the statutory description of duties of the new Anti-Doping Authority. This request has been heeded in section 5.1.2 of this explanatory memorandum.

The recommendations of the Netherlands Court of Audit and the Dutch Data Protection Authority have been appended to this explanatory memorandum as appendix.

9. Consequences for regulatory burden

This legislative proposal has no consequences for administrative burdens or compliance costs for citizens and companies.

10. Risks of fraud

This legislative proposal has been assessed for susceptibility to fraud. This assessment has led to the conclusion that the legislative proposal does not entail risks of fraud. NOC*NSF and the Anti-Doping Authority concur with this conclusion.

EXPLANATION BY SECTION

Section 1 Definition of terms

Section 1 contains the definition of terms that are decisive for the interpretation and scope of the Act. It is proposed to have the content be in line with the already existing definitions as much as possible. At the same time, "autonomous" definitions were chosen, which do not depend by means of reference on the meaning and scope that have been assigned to the relevant definitions in, for example, the national anti-doping rules of the World Anti-Doping Code.

The term "exemption" means an exemption an athlete obtains for the use of a substance or method that is in principle prohibited, but is allowed due to the health status of the athlete involved. In the Netherlands, such an exemption is only granted by the Anti-Doping Authority. The term "doping control process" largely determines the scope of the legislative proposal and includes the work that will be performed by the Anti-Doping Authority pursuant to Sections 5 and 6. It concerns a process to determine a possible violation of anti-doping rules by an athlete. "Athlete" is defined as a person who engages in sport and who is committed to anti-doping rules. In other words, this commitment is a required condition of the performance of duties and authorities by the Anti-Doping

Authority and in principle occurs due to a membership of a sports association or due to an agreement. The term "anti-doping rules" means what in practice is meant by that term, namely a document that contains ruled in the area of doping. However, such a document will only be designated as anti-doping rules if it is determined by a sports organisation or an anti-doping organisation within the meaning of the International Convention against Doping in Sport. Pursuant to Article 2(2), of that Convention, this in any case includes the International Olympic Committee, the International Paralympic Committee, organisers of large sports events, the World Anti-Doping Agency, international sports associations and national anti-doping organisations. Pursuant to Section 4(4) the Anti-Doping Authority is the Dutch, national anti-doping organisation and is as such covered by the definition of anti-doping organisation. However, national sports associations and their umbrella organisations do not fall under this definition and are therefore mentioned separately with the term "sports organisation". It was decided to expand the term "sports organisation" to clarify that NOC*NSF, which is strictly speaking not a sports association but an umbrella organisation of sports association, is an organisation that can determine anti-doping rules within the meaning of this Act. As already indicated above, the term "whereabouts information" is a term that is also used as such in the field.

Section 2 General rules for athletes

In a certain sense, the proposed Section 2 forms the core of the legislative proposal, because it includes the obligations for the athlete. In brief, these provisions relate to anti-doping rule violations in general and to the whereabouts regime in particular, and have been explained in section 6 of the general part of this explanatory memorandum. Section 2(3) includes the right to object, which has already been discussed in section 7.3.2 of the general part of this explanatory memorandum.

Section 3 Notification of the World Anti-Doping Code

Section 3(1) provides that the Minister of Health, Welfare and Sport will ensure notification of the World Anti-Doping Code, as well as any changes to that Code. In view of the accessibility of the rules that form the basis of the Anti-Doping Authority's work, it is proposed to provide for an obligation to publish. By publishing the World Anti-Doping Code in the Government Gazette, the accessibility of the rules does not depend exclusively on the website of the World Anti-Doping Agency. It also prevents the World Anti-Doping Agency from being assigned regulatory power by means of a dynamic reference. Pursuant to subsection 2, publication in the Government Gazette may also take place in the English language.

Section 4 Incorporating the Anti-Doping Authority

This Section contains the establishment of the Anti-Doping Authority as independent non-departmental public body. By including Capelle aan den IJssel as place of business, this legislative proposal is in line with the current situation as it exists before this Act enters into force. Pursuant to subsection 3, the non-departmental public body has its own legal personality and as such does not form part of the legal entity of the State of the Netherlands. This own legal personality is necessary because, in addition to performing legal acts that relate to the business operations, the Anti-Doping Authority also performs legal acts that form part of the performance of its duties. It concerns agreements that are concluded with organisers of sports events and competitions, which use the Anti-Doping Authority's services for the execution of the doping control process. These are agreements whereby the Anti-Doping Authority undertakes, against payment, to execute the doping control process during the event. It is not desirable that each of these agreements has to be concluded between the event organiser in question and the State of the Netherlands. By having its own legal personality, the Anti-Doping Authority can enter into these obligations independently. With the proposed subsection 4, the Anti-Doping Authority is appointed the national anti-doping organisation, with reference to the World Anti-Doping Code. In the most recent version of the Code (appendix I), the national anti-doping organisation is described as the "entity(ies) 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."

Section 5 Duties

This Section contains the listing of the duties of the Anti-Doping Authority: to combat doping in sport, to execute the doping control process and to provide education on doping. The duty that is stated in Section 5(1)(a) is the general key duty of the Anti-Doping Authority. The scope of the duty, as referred to under (b), is determined by the term "doping control process", which is defined in Section 1. The duties referred to in under (a), (b) and (c) are performed in accordance with the Code, pursuant to subsection 2. Subsection 2 emphasises that the Anti-Doping Authority's work is performed within the frameworks that have been laid down for that work by the World Anti-Doping Agency and to which the Anti-Doping Authority has committed itself. Subsection 2 must expressly be seen as a limitation of the duties that the Anti-Doping Authority will perform based on this legislative proposal; the provision is not intended as an expansion of those statutory duties.

In addition, subsection 1(d) proposes to include a legal basis for assigning additional duties. If it becomes desirable in the future to assign new duties to the Anti-Doping Authority, this will be possible pursuant to subsection 1(d). This provision therefore offers a certain extent of flexibility. With this flexibility, the legislative proposal deviates from the starting principle that public authority is granted by law; the proposed subsection 1(d) delegates that authority to the Minister of Health, Welfare and Sport. Comparable provisions can be found in Section 4b(2)(b) of the Road Traffic Act 1994 [*Wegenverkeerswet 1994*] and in Section 2(7)(c) of the Tests and Examination Board Act [*Wet College voor toetsen en examens*]. This flexibility is required in connection with the possibility that even a relatively small change of the Code may lead to the Anti-Doping Authority being obligated to perform a new duty in addition to the existing statutory duties. The proposed provision (d) enables the Anti-Doping Authority to perform this new duty that ensues from the Code. It is therefore logical that the duty to be assigned to the Anti-Doping Authority must be related to the fight against doping in sport, as is also evident from the wording of Section 5(1)(d). In accordance with Section 6, opening words and under (d), of the Non-Departmental Public Bodies Framework Act, the relevant regulation is also signed by the Minister of Housing and the Central Government Sector.

Section 6 Powers

Section 6 contains the listing of the powers of the Anti-Doping Authority, as already described in section 5.2 of the general part of this explanatory memorandum. These powers are broken down in the general powers (subsection 1, the powers that relate to the processing of personal data (subsection 2) and, supplementary to subsection 2, the power to perform the already mentioned intelligence & investigations activities. The authorities that are included in the first and subsection 2 are limited to the execution of the doping control process and the performance of the statutory duties, respectively. In view of the use of the definitions "doping control process" and "athlete", commitment to anti-doping rules is a condition that must be met before the Anti-Doping Authority can use the powers included in subsection 1 against the athlete in question. The powers included in the subsection 1 differ from the powers included in the second and third subsection. As discussed above, subsection 3 contains a basis for the performance of the intelligence & investigations activities that ensue from Article 5.8.1 of the Code.

Section 7 Structure

As described in the general part of this explanatory memorandum, it is proposed to appoint three (part-time) officers. This links up with the management model of the Anti-Doping Authority as a foundation, which functions well. Subsection 3 provides for the nomination of the board members. Pursuant to the Non-Departmental Public Bodies Framework Act, the officers are appointed by the Minister of Health, Welfare and Sport. It is proposed to have the nomination of the board members be made by one or more sports organisations designated by the Minister of Health, Welfare and Sport. In practice, this will be NOC*NSF. The Minister of Health, Welfare and Sport, the Anti-Doping Authority and NOC*NSF

jointly draw up the job profiles that form the basis of the nomination by NOC*NSF. Pursuant to subsection 4, further rules may be determined by ministerial regulation for this procedure, if there is reason to do so in the future. This reason is not currently present.

Section 8 Board regulations

Section 8(1) contains an obligation for the Anti-Doping Authority to draw up board regulations, which in any case contain a regulation in respect of the subjects referred to in subsection 2. This creates a transparent control instrument for the general functioning of the Anti-Doping Authority. It is expressly a non-exhaustive list; the Anti-Doping Authority is naturally free to arrange additional subjects in the board regulations as it sees fit. Pursuant to Section 11(1) of the Non-Departmental Public Bodies Framework Act, the board regulations require the approval of the Minister of Health, Welfare and Sport.

Section 9 Financing

In accordance with the situation up until this legislative proposal has entered into force, the Anti-Doping Authority will be financed by a combination of three flows of funds. Firstly, this is financing from the national budget. The second flow of funds consists of rates that are charged to the "purchasers" of the doping control process, for example an organiser of a sports event that requests the Anti-Doping Authority to arrange for the execution of the doping control process at that event. Thirdly, it is proposed to include a remaining category, indicated in the legislative proposal as "other income". This would include, for example, income from games of chance that the sports world provides to the Anti-Doping Authority by means of subsidy.

Section 10 Rate structure

Section 10(1) of the legislative proposal contains a basis for the levying of rates by the Anti-Doping Authority. The levying of rates will, among other things, take place if an organiser of sports events applies to the Anti-Doping Authority with the request to ensure the execution of the doping control process during the event. This levying of rates must be viewed in light of Chapter 4b of the Competitive Trading Act [*Mededingingswet*], in particular with regard to the activities that the Anti-Doping Authority performs in competition with other companies. As stated in the letter of 1 December 2014 (Parliamentary Papers II 2014/15, 30 234, no. 117, page 2), based on this legislative proposal commercial providers of doping tests retain the option of performing doping tests, in so far as the athletes' consent offers sufficient basis for the processing of personal data. This will be the case for athletes at a lower level. With regard of those activities, the Anti-Doping Authority will be obliged to comply with the rules of the Competitive Trading Act and the Public Enterprises (Market Activities) Decree [*Besluit markt en overheid*], including the obligation for the non-departmental public body to charge at least the overall costs of the doping test. When the Doping Authority determines the rates, these require the consent of the Minister as part of the budget (based on the Framework Act). Approval may be withheld due to a conflict with the law or the general interest. Section 10(2) provides for the possibility that third parties can be involved in the realisation of the rate. Just as with the appointment of the board members, sports organisation NOC*NSF must first be given consideration. Pursuant to subsection 3, the Minister can set maximum rates, if the rates are not determined because approval of the budget (and the rates it includes) is withheld.

Section 11 Supervision by Our Minister

This Section contains one deviation from the general regime of the Non-Departmental Public Bodies Framework Act, namely Section 22 of that Act. For the explanation of these deviations, we refer to section 4.4 of the general part of this explanatory memorandum.

Section 12 Exchange of data

Section 12 contains the legal basis for the Anti-Doping Authority to provide data to the Public Prosecution Service and the Healthcare Inspectorate. Pursuant to subsection 4, those data may not be provided in so far as this disproportionately

harms the privacy of the data subject. In order to also enable the inverse exchange of the data by those organisations with the Anti-Doping Authority, a basis for data provision must also be created for those organisations. For the Healthcare Inspectorate, this may be found in subsection 3. That subsection makes an exception for special personal data; these may not be provided by the Public Health Supervisory Service [*Staatstoezicht op de gezondheidszorg*] (of which the Healthcare Inspectorate forms part). It is conceivable that the Public Health Supervisory Service, in particular the Healthcare Inspectorate, gains access to data which are subject to (secondary) medical confidentiality during the performance of its supervisory activities. With a view to the privacy of the data subject and the major interest of the medical confidentiality, it is expressly provided that the Public Health Supervisory Service may not provide those data to the Anti-Doping Authority. In addition, it provides for an express basis for the provision of data to anti-doping organisations both inside and outside the European Union. In so far as the anti-doping organisations are outside the European Union, this provision of data is subject to stricter restrictions. These restrictions, which are required by the EU Privacy Directive and the Personal Data Protection Act based on that Directive, are included in the fifth subsection and aim to protect the privacy of the athlete. For a further explanation of the necessity and privacy aspects of the provision of data, we refer to section 7.2.5 of this explanatory memorandum. For the explanation of the exchange of data with customs, we refer to section 5.2 of this explanatory memorandum.

Section 13 Other provisions on the processing of personal data

Section 13 contains a number of other provisions on the processing of personal data in the context of the fight against doping. Subsection 1 contains a safeguard to protect athletes' privacy in the execution of the powers of the Anti-Doping Authority included in Section 6(2). It concerns the power to process personal data, including special personal data, to collect and process whereabouts information and to provide personal data to sports organisations for the benefit of conducting disciplinary proceedings. Pursuant to subsection 1, this data processing may only take place if it is necessary for the execution of the doping control process in respect of the athlete. Pursuant to subsection 2, the Anti-Doping Authority has been designated as controller for the processing of data. This obliges the Anti-Doping Authority to comply with the requirements that have been set for the controller pursuant to the Personal Data Protection Act. In addition to the necessity requirement laid down in subsection 1, subsection 3 contains the possibility of including additional, statutory "appropriate safeguards" as required by Section 23(1)(f) of the Personal Data Protection Act. Such rules could contain more specific requirements than the rules that have been laid down in the Personal Data Protection Act and could contain, among other things, requirements on the security or retention periods.

Section 14 Transitional provision

This Section contains a transitional provision that provides for an arrangement for a good transition. This transition consists of the dissolution of the Foundation Anti-Doping Authority of the Netherlands and having the non-departmental public body the Anti-Doping Authority perform the duties from the moment this legislative proposal turns into law and enters into force. This provision intends to safeguard the continuity of the performance of activities in the area of the fight against doping. In order to achieve that goal, it is desirable that the foundation and the non-departmental public body exist beside one another for a certain period of time (that is as short as possible). The transitional regime can be summarised as follows: at the moment the Act enters into force, the foundation will be given the opportunity to conclude the doping control processes that have already been initiated. However, the foundation will then not be able to initiate new doping control processes; after the Act has entered into force, only the non-departmental public body can initiate new doping control processes. In addition, the foundation must ensure that the foundation's data files are transferred to the non-departmental public body within twelve months after the foundation has ended the last doping control process. In order to have the transition from foundation to non-departmental public body go as smoothly as possible, it is logical for the non-departmental public body and the foundation to make agreements. These agreements will be laid down in a covenant. After the transitional period has ended, the foundation will no longer operate as anti-doping

organisation. However, dissolution of the foundation requires a legal act under private law and cannot be included in this legislative proposal as such. Finally, Section 14(3) includes a special transitional provision based on which the nomination for the members of the non-departmental public body and the drawing up of the appropriate job profiles are not legally prescribed the first time the members of the non-departmental public body are appointed. The basis for that regulation lies in Section 7(3). The reason for the transitional law is that, for the purpose of a smooth transition from foundation to non-departmental public body, it is desirable to enter into discussions with NOC*NSF on the appointment of the members of the non-departmental public body before the Act enters into force. If Section 7(3) were not included in the transitional law, the actions would have to wait until after the Act has entered into force. In order to have the Act enter into force quickly, this is not desirable. Nevertheless, despite the fact that it is no longer prescribed by law as a result of the transitional law, the Act aims to also have the "first" appointments take place based on the nomination and the job profiles in a way that is in line with Section 7(3).

Section 15 Entry into force

On the entry into force of the Act, the government policy in respect of common commencement dates will be linked up with (Parliamentary Papers II 2009/10, 29 515, no. 309).

Signature

Pursuant to Section 6 of the Non-Departmental Public Bodies Framework Act, all Acts in which the execution of public authority is assigned to a non-departmental public body are also signed by the Minister of Housing and the Central Government Sector.

The Minister of Health, Welfare and Sport,
E.I. Schippers

Appendix 4 - NATIONAL DOPING REGULATIONS 2021¹

AUTHOR: Doping Authority Netherlands
DATE: 25 March 2021

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Part I Concepts

Article 1 Definitions

- 1.1. Notification: informing the person in question orally that he or she has been selected for a doping control.
- 1.2. Metabolite: any substance produced by a biotransformation process.
- 1.3. Sampling procedure: the procedure starting from the arrival of the person concerned at the doping control station and continuing until the relevant form/doping control form has been signed.
- 1.4. Anti-doping organisation (ADO): the World Anti-Doping Agency (WADA) or a Signatory that is responsible for adopting rules for initiating, implementing or enforcing any part of the Doping Control process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other Major Event Organizations that conduct Testing at their Events, International Federations, and National Anti-Doping Organizations.²
- 1.5. Atypical finding: a report of an analysis conducted by a laboratory accredited or approved by WADA when the said result requires further investigation as provided for by the International Standard for Laboratories (ISL) related Technical Documents prior to the determination of an Adverse Analytical Finding.
- 1.6. Atypical passport finding: a report referred to as such in the applicable International Standard(s).
- 1.7. Athlete support personnel: any coach, trainer, manager, agent, member of the team staff, official, medical, paramedical personnel, parent and any other person working with, treating, assisting, supporting and/or supervising an athlete participating in or preparing for sports competition.
- 1.8. Adverse analytical finding: a report from a WADA-accredited laboratory or other WADA-approved laboratory that, consistent with the ISL, establishes the presence in a sample of a prohibited substance or its metabolites and/or markers, or evidence of the use of a prohibited method.
- 1.9. Adverse passport finding: a report referred to as such in the applicable International Standard(s).
- 1.10. Protected person: an athlete or other natural person who at the time of the anti-doping rule violation: (i) has not reached the age of sixteen years; (ii) has not reached the age of eighteen years and is not included in any Registered Testing Pool and has never competed in any International Event in an open category; or (iii) for reasons other than age has been determined to lack legal capacity under applicable national legislation.
- 1.11. Decision limit: the value of the analysis result for a threshold substance above which an adverse analytical finding shall be reported, as defined in the ISL.
- 1.12. Person concerned: the member (i) who has submitted an application for a therapeutic use exemption, (ii) has been selected for a doping control, (iii) undergoes or has undergone a doping control, (iv) who is the target of an investigation of a possible anti-doping rule violation, (v) who provides or wishes to provide substantial assistance, (vi) who is required to demonstrate something on the basis of these regulations, (vii) on whom a provisional suspension has been imposed, (viii) against whom doping proceedings have been instigated, (ix) who has admitted to an anti-doping rule violation and/or has been found guilty of an anti-doping rule violation, (x) who has appealed against any decision or judgement given against him or her, (xi) who is subject to a decision or judgment against which an appeal has been made, or (xii) upon whom consequences, including a period of ineligibility, have been imposed.
- 1.13. Confirmation: with regard to the analysis of the B sample 'confirmation' means that the analysis of the B sample (or the confirmation part of the split sample)

² The current list of Code Signatories can be found at: www.wada-ama.org.

- confirms the adverse analytical finding for one or more of the reported substances (including their metabolites or markers) and/or methods.
- 1.14. In Competition: the period commencing at 23:59 on the day before a competition in which the athlete is scheduled to participate through to the end of such competition and the sample collection process related to such competition.
 - 1.15. Athlete biological passport: the programme and the methods for collecting and processing information referred to in the International Standard for Testing and Investigations (ISTI) and the ISL.
 - 1.16. Out of competition: any period that is not in competition.
 - 1.17. CAS: Court of Arbitration for Sport.
 - 1.18. Consequences: consequences include (a) the disqualification of competition results, (b) ineligibility, (c) provisional suspension, (d) financial consequences, including a financial penalty imposed for an anti-doping rule violation (if applicable) or the recovery of costs associated with an anti-doping rule violation (if applicable), and (e) public disclosure (see Article 57). Teams in team sports may also be subject to consequences as provided for in Article 53.
 - 1.19. Control results: all information resulting from a doping control or attempted doping control, including (but not limited to) the information resulting from the analysis or analyses conducted. Control results will always include: adverse analytical findings, atypical findings, results from further investigation(s), adverse passport findings and atypical passport findings.
 - 1.20. Therapeutic use exemption: a Therapeutic Use Exemption allows an Athlete with a medical condition to Use a Prohibited Substance or Prohibited Method, but only if the conditions set out in Article 4.4 Code and the International Standard for Therapeutic Use Exemptions (ISTUE) are met.
 - 1.21. Doping Authority Netherlands: the independent public authority 'Dopingautoriteit', the NADO as designated by the Dutch government for the Netherlands, which has the roles and responsibilities as described in these regulations and National law.
 - 1.22. Test: shall be understood as defined in the ISTI and shall include, among others, notification of the athlete and sample collection.
 - 1.23. Doping Control: All steps and processes from test distribution planning through to ultimate disposition of any appeal and the enforcement of Consequences, including all steps and processes in between, including but not limited to, Testing, investigations, whereabouts, TUEs, Sample collection and handling, laboratory analysis, Results Management and investigations or proceedings relating to violations of Article 10.14 Code (Status During Ineligibility or Provisional Suspension).
 - 1.24. Doping control official: a person appointed and trained by the testing agency who is assigned the delegated authority for the implementation of the doping control and to carry out the responsibilities of doping control officials in the ISTI.
 - 1.25. Prohibited list: the list of prohibited substances and prohibited methods in the appendix constituting part of these regulations and adopted by WADA as the Prohibited List International Standard.
 - 1.26. Anti-doping rule violation: a violation of doping regulations.
 - 1.27. Doping regulations: (i) the doping regulations adopted by or on behalf³ of the federation, as well as the appendices and rules adopted by WADA or Doping Authority Netherlands⁴ (hereinafter: "these regulations"), and (ii) doping regulations adopted by an ADO or other body or organisation, regardless of whether these doping regulations have been given a different name by the relevant ADO or other body or organisation. Rules relating to doping adopted by government authorities or a legislative body will also be considered to be doping regulations for the purposes of the application of these regulations.
 - 1.28. Possible violation: a possible anti-doping rule violation.

³ The Institute for Sports Law (ISR) adopts the Doping Regulations on behalf of federations affiliated to the ISR.

⁴ The appendices are published on the website of Doping Authority Netherlands: www.dopingautoriteit.nl.

- 1.29. Substances of abuse: for the purposes of Parts IX and X, substances of abuse are those substances specifically identified as such in the Prohibited List. These drugs are regularly abused outside the context of sport in society as a whole.
- 1.30. Event: a series of individual or separate competitions conducted together under one ruling body, such as an international federation or a national sports federation.⁵
- 1.31. International event: an event or a competition organised by or under the auspices of the IOC, the IPC, an international federation, a Major Event Organization or another international sports organisation that is the ruling body for the event or appoints the technical officials for the event.
- 1.32. International-Level Athlete: an athlete engaging in a sport at the international level according to the definition of each international federation and in line with the ISTI.
- 1.33. International Standard: international standard adopted by WADA in support of the World Anti-Doping Code. Compliance with an International Standard (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard were performed properly. The International Standards apply to these regulations and are considered to be a part of it. The technical documents associated with an international standard are considered to be part of the international standard in question.
- 1.34. Member: the person (including an organisation or a legal entity, e.g. a team or a club) who, through a membership, licence, agreement, participation in a competition (of the federation or an international federation) or in any other way, is bound by the Articles of association, regulations and decisions of the federation, or a legal entity affiliated to the federation. People active in or employed by the federation (such as people active in or employed by an association that is active in the federation or who work for a team that engages in a sport) who are not affiliated to the federation through a membership, licence or other agreement are also considered to be members.
- 1.35. Marker: a compound, group of compounds or biological variables that indicate or indicates the use of a prohibited substance and/or prohibited method.
- 1.36. Minor: a person who has not yet reached the age of eighteen years.
- 1.37. Sample or specimen: any biological material collected for the purpose of the doping control process.
- 1.38. National-Level Athlete: an athlete in the RTP.
- 1.39. National Anti-Doping Organisation (NADO): the entity designated by each country as possessing the primary authority and responsibility to adopt and implement anti-doping rules, direct the collection of samples, to manage test results and to conduct results management at the national level.
- 1.40. National event: a sport event or competition at which international-level athletes and/or national-level athletes participate that is not an international event.
- 1.41. Signatory: an entity that has accepted the World Anti-Doping Code and has therefore agreed to implement the Code.⁶
- 1.42. Person: a natural person or an organisation or other entity.
- 1.43. Attempt: purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation. An attempt does not constitute an anti-doping rule violation if the member renounces the attempt before it is discovered by a third party not involved in the attempt.
- 1.44. Recreational athlete: (a) athletes who are not covered by the definition of an international-level athlete and/or national-level athlete, (b) athletes who are not

⁵ Examples of events include: the Olympic Games, the Paralympic Games, World Championships or European Championships.

⁶ Signatories are designated by WADA and the World Anti-Doping Code as '(Code) Signatories' and are added by WADA to the overview of 'Code Signatories'.

participating, going to participate or who have participated in competitions classified as national competitions by Doping Authority Netherlands⁷, and (c) athletes who have not belonged to one of the following categories during the five-year period prior to committing an anti-doping rule violation: (i) international-level or national-level athletes, (ii) athletes included in an RTP managed by an international federation or a NADO (including Doping Authority Netherlands) and (iii) athletes who have represented a country in an international event in an open category. Doping Authority Netherlands determines which athletes are recreational level athletes.

- 1.45. Registered Testing Pool (RTP): The pool of highest-priority Athletes established separately at the international level by International Federations and at the national level by National Anti-Doping Organizations, who are subject to focused In-Competition and Out-of-Competition Testing as part of that International Federation's or National Anti-Doping Organization's test distribution plan and therefore are required to provide whereabouts information as provided in Article 5.5 Code and the ISTI.
- 1.46. Fault: any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2 Code.
- 1.47. Selection: the selection of a member for a doping control. Selection may involve drawing lots, be based on competition results, or involve any other method to be determined by an ADO.
- 1.48. Specified substance: the substances or substance categories so identified on the prohibited list.
- 1.49. Team sport: a sport in which the substitution of participants is permitted during a competition.
- 1.50. Technical Document: a document adopted and published by WADA containing mandatory technical requirements on specific anti-doping topics as set forth in an International Standard.
- 1.51. Testing process: the part of the doping control process that includes (i) the scheduling of the doping control(s), (ii) designation of an athlete for a doping control, (iii) the sampling procedure, (iv) the processing of the sample, and (v) the transport of the sample to the laboratory.
- 1.52. Disciplinary body: the body or panel, including CAS, that is competent to administer disciplinary regulations on the basis of these regulations, the Articles and/or other regulations of the federation or an ADO.
- 1.53. Ineligibility: sanction involving barring the person concerned on account of an anti-doping rule violation for a given period of time from participation in any contest, competition, event or other activity, and from acting or participating in any capacity whatsoever.
- 1.54. Prohibited method: any method so described on the prohibited list.
- 1.55. Prohibited substance: a substance, or a class of substances, on the prohibited list.

⁷ Doping Authority Netherlands will publish this list on its website, classifying these competitions as: 'wedstrijden nationaal niveau B' (national level B competitions).

- 1.56. Disqualification of competition results: declaring invalid the individual results of the person concerned in a particular contest, competition or event, with all the associated consequences such as the returning of medals and prize money, and the loss of points.
- 1.57. Contaminated product: a product that contains a prohibited substance (i) not stated on the label and (ii) not stated in information that can be obtained by means of a reasonable effort to find such information on the Internet.
- 1.58. Provisional hearing: an expedited abbreviated hearing prior to a hearing under Article 8 Code which takes place in the context of a provisional suspension that has been imposed and is intended to give the person concerned the opportunity to be heard orally or in writing.⁸
- 1.59. Competition: a single contest, match, game or singular sport contest.⁹
- 1.60. Whereabouts failure: a missed test or filing failure as described in the International Standard for Results Management (ISRM).
- 1.61. Whereabouts information: the information referred to in the ISTI and the Whereabouts appendix that a member of a registered testing pool is required to submit to Doping Authority Netherlands or another ADO.
- 1.62. World Anti-Doping Code: the latest World Anti-Doping Code adopted by WADA upon which these regulations are based. The definitions in the Code are part of these regulations by reference.

Where these regulations state definitions in the singular form, the plural forms of the concept will apply, and vice-versa, unless expressly stated otherwise.

Where these regulations state provisions in the present tense, the provision will also apply to events in the past, unless expressly stated otherwise.

The documents adopted by WADA can be consulted on: www.wada-ama.org.

Article 2 Doping

- 2.1. These regulations interpret doping as any violation listed in Articles 3 to 13 (inclusive).
- 2.2. Every member and all athlete support personnel are expected to be familiar with the contents of these regulations and the appendices accompanying these regulations, and specifically to know what constitutes an anti-doping rule violation, and also to be familiar with the prohibited substances and prohibited methods, and the categories of those substances and methods, described in the prohibited list. Every member is required to keep informed about the prevailing prohibited list as published on the websites of WADA and Doping Authority Netherlands.
- 2.3. Every member and all athlete support personnel shall take steps to familiarise themselves with the contents of these regulations and the appendices accompanying these regulations. When participating in an international event or in a competition or event abroad, a member shall take steps prior to such participation to familiarise himself with the prevailing rules and procedures relating to doping and doping controls for the competition or event in question.
- 2.4. Strict liability applies for the application of Articles 3 and 4. In other words, it is not necessary for intent, fault, negligence or knowing use on the part of the person concerned to be demonstrated in order to establish a violation of Article 3 or Article 4.

⁸ The provisional hearing does not involve a full hearing and review of the facts of the case.

⁹ For example: a football or basketball game or the finals of the Olympic 100-metre race in athletics. For stage races and other sport contests where prizes are awarded on a daily or other interim basis, the distinction between a competition and an event will be as provided in the rules of the applicable international federation.

Part II *Anti-doping rule violations*

Article 3 Presence

- 3.1. The presence of a prohibited substance and/or evidence of a prohibited method, the associated metabolites and/or markers in an member's sample constitute an anti-doping rule violation.
- 3.2. Excepting those substances for which a decision limit applies on the basis of the prohibited list or a Technical Document, any reported presence of any quantity of a prohibited substance or its associated metabolites or a markers in a member's sample constitutes an anti-doping rule violation.
- 3.3. The prohibited list, International Standards or Technical Documents may include specific criteria for reporting or assessing the presence and/or the quantity of specified prohibited substances found.
- 3.4. There is sufficient evidence of a violation of Article 3:
 - a. if a prohibited substance or metabolites or markers are present in the A sample of an person concerned when that person has waived the right to the analysis of the B sample and the B sample is not analysed;
 - b. if the B sample of a person concerned is analysed and this analysis confirms the presence of the prohibited substance or metabolites or their markers found in the A sample of the person concerned;
 - c. if the A or B sample is split into two parts and the analysis of the confirmation part of the split sample confirms the presence of the prohibited substance or metabolites or their markers found in the first part of the split sample; and/or
 - d. if the person concerned waives the right to the analysis of the confirmation part of the split sample.
- 3.5. Doping Authority Netherlands has the right to issue instructions for the analysis of the B sample, even if the person concerned waives the right to the analysis of the B sample.
- 3.6. It is each member's personal duty to ensure that no prohibited substance, metabolite and/or marker enters his or her body, and that no prohibited method is used on his or her body. Members are responsible for all prohibited substances, evidence of prohibited methods, metabolites and/or markers found in their samples. Accordingly, it is not necessary for intent, fault, negligence or knowing use on a member's part to be demonstrated in order to establish a violation of Article 3.
- 3.7. Any presence of a prohibited substance, evidence of a prohibited method, metabolite and/or marker in a sample taken from a member shall constitute a violation of Article 3, regardless of when the prohibited substances and/or methods in question have been ingested, used or administered.

Article 4 Use

- 4.1. The use or attempted use of a prohibited substance /or a prohibited method constitutes an anti-doping rule violation. The success or failure of the use or attempted use of a prohibited substance or prohibited method is not material for the establishment of an anti-doping rule violation.

- 4.2. "Use" means: the utilisation, application, ingestion, injection or assimilation by any means whatsoever of any prohibited substance or prohibited method.
- 4.3. There is in any case sufficient evidence of a violation of Article 4:
- a. if a prohibited substance or metabolites or markers are present in the A sample of a person concerned when that person has waived the right to the analysis of the B sample and the B sample is not analysed;
 - b. if the B sample of a person concerned is analysed and this analysis confirms the presence of the prohibited substance or metabolites or their markers found in the A sample of the person concerned;
 - c. if there are (i) reliable analytical data from the A or B sample and (ii) a satisfactory explanation can be given for the lack of confirmation in the other sample.
- 4.4. Notwithstanding the provisions of Article 4.3, use or attempted use of a prohibited substance or a prohibited method may in any case be established by other reliable means such as admissions, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the athlete biological passport, or other analytical information, even if that analytical information does not satisfy all the requirements to serve as independent evidence of a violation of Article 3.
- 4.5. It is each member's personal duty to ensure that no prohibited substance, metabolite and/or marker enters his or her body, and that no prohibited method is used on his or her body. Accordingly, it is not necessary for intent, fault, negligence or knowing use on the part of the person concerned to be demonstrated in order to establish an anti-doping rule violation. Intent must be demonstrated on the part of the person concerned to demonstrate attempted use of a prohibited substance or a prohibited method.

Article 5 Evasion

- 5.1. Evasion of the testing process constitutes an anti-doping rule violation.
- 5.2. Refusing, or failing to submit to, the testing process after having been selected for this purpose (orally or in writing) without compelling justification constitutes an anti-doping rule violation.

Article 6 Whereabouts failures

- 6.1. Any combination of three missed tests and/or filing failures, as defined in the ISRM, within a twelve-month period by a member in an RTP constitutes an anti-doping rule violation.
- 6.2. Members in a an RTP are subject to the obligations set out in the ISTI and the Whereabouts appendix.

Article 7 Tampering

- 7.1. Tampering or attempted tampering constitutes an anti-doping rule violation.
- 7.2. Tampering consists of intentional conduct that subverts the doping control process but is not covered by the definition of prohibited methods on the prohibited list.

- 7.3. Tampering will in any case considered to include:
- a. conduct that subverts the doping control process;
 - b. offering or accepting bribes to induce a person to engage in or fail to perform an act;
 - c. preventing sample collection;
 - d. affecting or making impossible the analysis of a sample;
 - e. falsifying documents submitted to an ADO, TUE committee or hearing panel;
 - f. procuring false testimony from witnesses;
 - g. committing any other fraudulent act with regard to an ADO or a hearing body to affect results management or the imposition of consequences;
 - h. any other similar intentional interference or attempted interference with any aspect of the doping control process;
- 7.4. Tampering and attempted tampering constitute an anti-doping rule violation, whether or not the doping control to which the tampering or attempted tampering related has been conducted correctly.

Article 8 Possession

- 8.1. Possession:
- a. of a substance or method prohibited out of competition; and
 - b. in competition of any substance or method prohibited in competition, constitutes an anti-doping rule violation unless the member (i) demonstrates that the possession is in accordance with a therapeutic use exemption granted in accordance with the Code or this member (ii) can provide another acceptable justification.
- 8.2. Possession in competition of a prohibited substance or a prohibited method by athlete support personnel constitutes an anti-doping rule violation unless the athlete support personnel:
- a. can demonstrate that the possession is in accordance with a therapeutic use exemption granted to a member or athlete in accordance with the Code; or
 - b. can provide another acceptable justification.
- 8.3. Possession out of competition of a prohibited substance or a prohibited method by athlete support personnel related to an (i) athlete, (ii) competition or (iii) training, constitutes an anti-doping rule violation unless the athlete support personnel:
- a. can demonstrate that the possession is in accordance with a therapeutic use exemption granted to a member or athlete in accordance with the Code; or
 - b. can provide another acceptable justification.
- 8.4. Possession means that:
- a. a member is (i) in actual physical possession of a prohibited substance and/or prohibited method, (ii) intends to acquire actual physical possession of a prohibited substance and/or prohibited method and/or (iii) intends to acquire control over the prohibited substance and/or prohibited method;
 - b. a member has exclusive control over the prohibited substance and/or prohibited method or the premises in which a prohibited substance and/or prohibited method is present but there is no question of actual physical possession as referred to in Article 8.4(a);
 - c. a member does not have exclusive control over the prohibited substance and/or prohibited method or the premises in which a prohibited substance and/or prohibited method is present but the member was aware of the presence of the prohibited substance and/or of the prohibited method and intended to exercise control over it; and/or

- d. a member has purchased, acquired or bought one or more prohibited substances and/or prohibited methods via the Internet and/or in any other way.
- 8.5 For the application of these regulations, the purchase of a prohibited substance is considered to be the equivalent of possession, even if the prohibited substance does not reach the purchaser, is received by another person or is sent to the address of a third party.
- 8.6. Sole possession does not constitute an anti-doping rule violation if the member, before receiving notice of a possible violation involving possession, has taken concrete steps that establish that (i) it has never been the intention to acquire possession of the prohibited substances and/or prohibited methods in question; and (ii) he or she has relinquished possession by reporting this specifically to Doping Authority Netherlands or another ADO.

Article 9 Trafficking

- 9.1. Trafficking or attempted trafficking of any prohibited substance and/or prohibited method constitutes an anti-doping rule violation.
- 9.2. Trafficking is understood to mean the selling, giving, transporting, shipping, delivering or distributing one or more prohibited substances or prohibited methods by an athlete, athlete support person or any other person subject to the authority of Doping Authority Netherlands or another ADO to a third party in a physical, electronic and/or any other way, or the possession for one of these purposes of one or more prohibited substances or prohibited methods.
- 9.3. There is no anti-doping rule violation constituting trafficking if the conduct in question constitutes actions of "bona fide" medical personnel involving a prohibited substance or a prohibited method used (i) for genuine and legal therapeutic purposes or (ii) for another acceptable reason.
- 9.4. There is no anti-doping rule violation constituting trafficking if the conduct in question constitutes actions involving a prohibited substance which is not prohibited out of competition unless the circumstances as a whole demonstrate that this prohibited substance is (a) not intended for genuine and legal therapeutic purposes or (b) is intended to enhance sport performance.

Article 10 Administration

- 10.1. Administration or attempted administration by an athlete or other person to any athlete at any time or place of a substance and/or method prohibited out of competition constitutes an anti-doping rule violation.
- 10.2. Administration or attempted administration by an athlete or other person to any athlete in competition of a substance and/or method prohibited in competition constitutes an anti-doping rule violation.
- 10.3. For the application of these regulations, "administration" is defined as: the provision, supply, supervising, facilitating or otherwise participating in the use a prohibited substance or method.
- 10.4. There is no anti-doping rule violation constituting administration if the conduct in question constitutes actions of "bona fide" medical personnel involving a

prohibited substance used (i) for genuine and legal therapeutic purposes or (ii) for another acceptable reason.

- 10.5. There is no anti-doping rule violation constituting administration if the conduct in question involves a prohibited substance which is not prohibited out of competition unless the circumstances as a whole demonstrate that this prohibited substance is not intended for genuine and legal therapeutic purposes or is intended to enhance sport performance.

Article 11 Complicity

- 11.1. Assisting, abetting, being present at, collaborating with, supervising, encouraging, furthering, encouraging, helping, stimulating, inciting, provoking, conspiring in, cooperating with, concealing, covering up, and/or any other form of intentional complicity or attempted complicity with or in the presence of:
- a. an anti-doping rule violation;
 - b. an attempt to commit an anti-doping rule violation; and/or
 - c. failure by a person concerned to comply with the provisions of Article 52.1, constitutes an anti-doping rule violation. Complicity or attempted complicity may include either physical or psychological assistance.
- 11.2. Attempted complicity constitutes an anti-doping rule violation.
- 11.3. Support for a person concerned from athlete support personnel or another member with any violation of the provisions of Article 52.1 constitutes an anti-doping rule violation (of this Article 11).

Article 12 Prohibited association

- 12.1. Association by a member in a professional or sport-related capacity with any athlete support person still serving a period of ineligibility pursuant to an anti-doping rule violation constitutes an anti-doping rule violation. The period during which this violation may take place is equal to the period of ineligibility imposed on the athlete support person concerned.
- 12.2. Association by a member in a professional or sport-related capacity with any athlete support person who (i) is not subject to the authority of an ADO and (ii) who has been convicted or found in a criminal or disciplinary proceeding to have engaged in conduct which would have constituted an anti-doping rule violation if the person in question had been subject to the authority of an ADO constitutes an anti-doping rule violation.
- 12.3. For the application of Article 12.2, the conviction or finding referred to in that Article will result in the ineligibility of the athlete support person in question, with that ineligibility meaning that the member referred to in that Article is not permitted to associate with that athlete support person. The period of ineligibility during which the violation referred to in Article 12.2 can occur will be the longer of:
- a. six years starting from the time of the decision in the criminal or disciplinary proceeding; or
 - b. the duration of the sanction imposed in the criminal or disciplinary proceeding.
- 12.4. Association by a member in a professional or sport-related capacity with any athlete support person serving as a front or intermediary for the athlete support

personnel referred to in Articles 12.1 or 12.2 constitutes an anti-doping rule violation.

- 12.5. In order to demonstrate a violation of Article 12, the federation or Doping Authority Netherlands must demonstrate that the member knew that the athlete support personnel had been subject to a period of ineligibility as referred to in Article 12.1 or Article 12.2.
- 12.6. The burden will be on the member to establish that any association with athlete support personnel covered by the provisions of Article 12.1 and/or Article 12.2 is not in a professional or sport-related capacity and/or that such association could not reasonably have been avoided.
- 12.7. If an ADO has information relating to athlete support personnel that fulfils the criteria stated in Articles 12.1, 12.2 and/or 12.4, the ADO shall forward that information immediately to Doping Authority Netherlands.
- 12.8. If Doping Authority Netherlands has information relating to athlete support personnel that fulfils the criteria stated in Articles 12.1, 12.2 and/or 12.4, Doping Authority Netherlands shall forward that information immediately to WADA.
- 12.9. The types of association prohibited pursuant to this Article include:
 - a. obtaining advice about training, strategy, technique, nutrition or medical matters;
 - b. obtaining (i) therapy, (ii) treatment or (iii) prescriptions;
 - c. offering samples for analysis; and/or
 - d. allowing a person to act as a fiduciary, agent or representative.
- 12.10. Prohibited association need not involve any form of compensation.

Article 13 Discouragement or Retaliation

- 13.1. Where such conduct does not otherwise constitute a violation of Article 7, any act which threatens or seeks to intimidate a person with the intent of discouraging the person from reporting information in good faith that relates to an alleged anti-doping rule violation or alleged non-compliance with the Code to WADA, an ADO, law enforcement, a regulatory or professional disciplinary body, a disciplinary body or person conducting an investigation for WADA or an ADO.
- 13.2. Discouragement or retaliation includes:
 - a. any action taken by a member to discourage such reporting and/or retaliate against the person making the report in good faith; and
 - b. retaliation against a person who, in good faith, has provided evidence or information that relates to an alleged anti-doping rule violation or alleged non-compliance with the Code to WADA, an ADO, law enforcement, a regulatory or disciplinary body or a person conducting an investigation for WADA or an ADO.
- 13.3. For the purposes of this Article, retaliation, threats and intimidation include all acts taken against a person which are not in good faith or which can be considered to be a disproportionate response.

Part III Prohibited substances and prohibited methods

Article 14 Prohibited list

- 14.1. The applicable prohibited list is at all times the prohibited list that has been adopted by WADA and has become effective most recently. Neither the prohibited list nor any category, classification, substance or method on the list is susceptible to challenge or appeal in the context of a possible violation.
- 14.2. A new prohibited list shall come into effect as such on the date determined by WADA.
- 14.3. Where the prohibited list refers to ADOs, this will mean Doping Authority Netherlands for the purposes of the application of these regulations unless other ADOs are competent or share competence.
- 14.4. Where, in the application of these regulations, reference is made to a prohibited substance, this will also be taken to mean, where applicable, any precursors, metabolites and markers related to that prohibited substance.
- 14.5. For the purposes of Part IX and Part X, all prohibited substances are specified substances unless otherwise stated on the prohibited list. No prohibited method shall be a specified method unless it is specifically identified as a specified method on the prohibited list.
- 14.6. A decision taken by WADA about (i) the prohibited substances and methods to be included on the prohibited list, (ii) the allocation of substances to categories of the prohibited list, (iii) the classification of a substance as being prohibited at all times or solely in competition, (iv) the classification of a substance or method as a specified substance, specified method or as a substance of abuse, is final and binding. As a result, no objection can be made by a member, athlete or other person, including (but not limited to) any objection based on the argument that the substance or method is not a masking agent and/or does not meet one or more of the criteria listed in the World Anti-Doping Code for the inclusion of a substance or method on the prohibited list.

Article 15 Therapeutic use exemptions

- 15.1. The presence of a prohibited substance or its metabolites or markers, and/or the use or attempted use, possession or administration or attempted administration of a prohibited substance or prohibited method shall not be considered an anti-doping rule violation if it is consistent with the provisions of a TUE granted in accordance with the ISTUE.
- 15.2. The TUE appendix contains rules relating to the granting and validity of therapeutic use exemptions.
- 15.3. Members are bound by the decisions of the TUE committee as described in the TUE appendix.
- 15.4. The TUE committee works on the basis of the ISTUE and the TUE appendix. Doping Authority Netherlands appoints this committee. The composition, working methods, decision-making procedures and other matters in respect of the TUE committee will be determined by Doping Authority Netherlands in so far as these matters are not determined by the ISTUE or the TUE appendix.

15.5. Article 4.4 Code is applicable and included here by reference.

Part IV *Anti-Doping Activities*

Article 16 *Anti-doping activities*

- 16.1. The World Anti-Doping Code defines anti-doping activities as: anti-doping education and information, scheduling the distribution of doping controls, the maintenance of a registered testing pool, managing athlete biological passports, conducting testing, organising the analysis of samples, the gathering of intelligence and conducting investigations, the processing of TUE applications, results management, hearings, monitoring and enforcing compliance with any consequences imposed, and all other activities related to anti-doping to be carried out by or on behalf of an Anti-Doping Organisation as set out in the World Anti-Doping Code and/or the International Standards.
- 16.2. The federation is required to cooperate with the implementation of these regulations, the World Anti-Doping Code, and the International Standards. The federation (including clubs, associations and teams) is obliged to cooperate in the implementation of the International Standard for Education (ISE), as well as the resulting activities and education activities of Doping Authority Netherlands.
- 16.3. The prohibitions stated in these regulations will be enforced by means of doping controls, and on the basis of intelligence and investigation.
- 16.4. Testing shall be undertaken to obtain analytical evidence and information as part of the monitoring of compliance with, in particular but not only, violations of Article 3 and Article 4. Doping controls are also designed to prevent and deter doping.
- 16.5. ADOs are competent to investigate possible violations. They may use analytical and non-analytical intelligence and information for that purpose.
- 16.6. Doping Authority Netherlands carries the responsibility for the doping control process and conducting results management. Doping Authority Netherlands may delegate each part of the doping control process and education programs to delegated third parties. The definition of 'Delegated Third Party' is: Any person to which an ADO delegates any aspect of the doping control process or anti-doping education programs including, but not limited to, third parties or other ADOs that conduct sample collection or other doping control services or anti-doping educational programs for the ADO, or individuals serving as independent contractors who perform doping control services for the ADO (e.g., non-employee doping control officers or chaperones). This definition does not include CAS.
- 16.7. Disciplinary proceedings, including the burden of proof and imposing provisional suspensions, are part of the doping control process and results management. Doping Authority may delegate these tasks (handling disciplinary proceedings and provisional suspensions) to the national federation, acting as a Delegated Third Party. However, Doping Authority Netherlands shall require national federations to perform any delegated aspects of Doping Control, including, but not limited to, disciplinary proceedings or provisional suspensions, in compliance with the Code and the International Standards and shall remain fully responsible for ensuring that any delegated aspects are performed in compliance with the Code. Any

reference made to the authority of national federations in these regulations with respect to Doping Control shall be understood in the context of the national federation acting as a Delegated Third Party.

Article 17 Intelligence and investigation

- 17.1. Doping Authority Netherlands collects, assesses and processes information from all relevant and available sources for the purposes of conducting doping controls and/or investigating possible anti-doping rule violations. The ISTI sets out more detailed rules for investigations. Doping Authority Netherlands is competent to collect and investigate information, including personal data, relating to possible violations of doping regulations.
- 17.2. Doping Authority Netherlands may, for the purposes of the investigation of one or more possible violations, exchange information with national and international sports organisations, foreign ADOs, WADA and national and international investigatory authorities and judicial institutions.
- 17.3. All members are required to collaborate with investigations by Doping Authority Netherlands of rumours about doping and possible violations.
- 17.4. Members may report possible violations and any intelligence or information relating to possible anti-doping rule violations to Doping Authority Netherlands or the federation. The federation must forward reports of this kind to Doping Authority Netherlands within fourteen days after the report has been received by the federation.
- 17.5. If any investigation by the federation and/or an officer of the federation indicates that there may be a possible violation, the federation or the federation officer shall report this to Doping Authority Netherlands as quickly as possible.
- 17.6. Subject to the World Anti-Doping Code and the ISL, Doping Authority Netherlands is entitled, at any time:
 - a. to conduct a re-analysis and/or an additional analysis of the sample of the person concerned, or instruct others to do so;
 - b. to analyse and/or to investigate urine produced, or blood given, by the person concerned, regardless of the amount of urine produced or blood given, or instruct others to do so;
 - c. to conduct any further investigation, in this or other cases, and/or to take any steps permitted or not expressly prohibited by the World Anti-Doping Code and the International Standards, or instruct others to do so;
 - d. to conduct any investigation into any conduct of the person concerned in the context of the doping control which he or she has undergone when that conduct is relevant to the aforesaid doping control, or instruct others to do so; and
 - e. to investigate all possibly relevant information, documentation, materials, and bodily samples (other than the urine produced or blood given by the person concerned) in the context of determining whether there has been a violation of applicable doping regulations by the person concerned and/or others, or instruct others to do so.
- 17.7. All actions and/or investigations referred to in this Article take place in the context of the enforcement of the applicable doping regulations. This enforcement is explicitly not confined to the assessment of whether there has been a single anti-doping rule violation, and it also extends to the assessment of whether the

person concerned and/or others has/have committed another anti-doping rule violation.

Article 18 Doping control

- 18.1. Any member may be required to provide a sample at any time and at any place by Anti-Doping Netherlands or any other Anti-Doping Organization with testing authority over them. Doping controls may be conducted in the context of any competition and any event, and out of competition. Article 5 Code is incorporated by reference and applies mutatis mutandis.
- 18.2. The doping control will take place in full conformity with the provisions of the ISTI applying at the time of the doping control.
- 18.3. In accordance with Articles 5.2 and 5.3 Code, the following organisations have the authority to conduct doping controls in and out of competition on members or to issue instructions to that effect:
 - a. Doping Authority Netherlands;
 - b. the international federation (in relation to athletes who are subject to its rules);
 - c. WADA; and
 - d. Major Event Organizations.
- 18.4. During national events, doping controls are initiated, organised and coordinated by Doping Authority Netherlands.

Article 19 Re-analysis

- 19.1. Article 6 Code lays down further rules on the analysis of samples. These rules are incorporated by reference and apply mutatis mutandis.
- 19.2. Laboratories shall analyse the samples and report the results in full conformity with the ISL.
- 19.3. Re-analysis and further analysis will be in full compliance with the provisions of the Code, the ISL and, where applicable, the ISTI.
- 19.4. If Doping Authority Netherlands has issued the instructions for the doping control, Doping Authority Netherlands can have each sample re-analysed and/or analysed further at any time, in other words before and after the notification of the person concerned of the result of the analysis of the A or B sample.
- 19.5. If Doping Authority Netherlands has issued the instructions for the doping control, WADA, as well as Doping Authority Netherlands, may order a re-analysis or further analysis of any sample at any time after the person concerned has been notified about the results of the analysis of the A or B sample.
- 19.6. A refusal by Doping Authority Netherlands to re-analyse or further analyse samples and/or to make samples available for re-analysis will have no effect on (i) the adverse analytical finding, (ii) the establishment of an anti-doping rule violation, or (iii) any other matter relating to a hearing relating to a possible violation.

Article 20 Registered testing pool (RTP)

- 20.1. Doping Authority Netherlands establishes and manages an RTP.
- 20.2. Doping Authority Netherlands determines:
 - a. which members will be included in this RTP;
 - b. when members are to be included in this RTP, or removed from it.Doping Authority Netherlands will inform the members concerned accordingly in writing.
- 20.3. The obligations incumbent on members included in the RTP are set out in these regulations, the appendices accompanying these regulations and/or the International Standards.
- 20.4. The federation shall support Doping Authority Netherlands in its efforts to acquire the names and details of members for the purposes of the RTP when Doping Authority Netherlands asks the federation to do so.

Article 20a Resuming competition

- 20a.1. If a member who has been included in the RTP retires from competition, he or she shall inform Doping Authority Netherlands and the international federation (if the member has been included in the RTP of the international federation) accordingly in writing.
- 20a.2. A member who retires from competition when he or she has been included in the RTP and then wishes to resume active participation in competitive sports, shall not compete in international events or national events until he or she has made himself or herself available for doping controls by giving written notice six months prior to the national or international event in question to his or her international federation and Doping Authority Netherlands of his or her wish to participate. The six-month period starts on the date upon which both the relevant international federation and Doping Authority Netherlands receive such written notice.
- 20a.3. WADA, in consultation with the relevant international federation and Doping Authority Netherlands, may grant a full or partial exemption to the obligations described in Article 20 where the strict application of that obligation would be unfair to a member. A decision by WADA in this respect may be appealed under Part XII.
- 20a.4. A member who, during a period of ineligibility imposed on him or her pursuant to an anti-doping rule violation, has retired from competition shall inform the ADO that has imposed the period of ineligibility in writing of the fact that he or she has retired. If this member subsequently wishes to resume competition, he or she may not participate in an international or national event until he or she has made himself or herself available for doping controls (by notifying the relevant international federation and Doping Authority Netherlands in writing) during the longer of: (a) 6 months; or (b) the Period of Ineligibility which was remaining on the date the Athlete retired. The Athlete does not get credit against the remaining Period of Ineligibility for the time between their retirement and their notice that they want to return.
- 20a.5. If a member, pending results management, retires from competition, the ADO conducting results management retains the authority to complete this process. If

a member retires from competition before results management has begun, the ADO with the authority to initiate results management for this member at the time the member has committed an anti-doping rule violation is competent to conduct results management.

- 20a.6. If the person concerned, at the point in time at which a possible violation has occurred, fulfils the definition of a member and/or athlete support personnel, these regulations will remain applicable to him or her in full for the duration of the hearings relating to that possible violation, including any appeals, even if there are one or more changes in his or her status, for example as a result of the termination of his or her membership of the federation and/or the termination of a contract/employment contract.

Part V Results management

Article 21 General

- 21.1. Results management is the process that comprises the steps and the period of time starting from the notification (including pre-notification steps) referred to in Article 5 of the ISRM, through the charge until the hearings relating to an anti-doping rule violation, including any appeal (where applicable). Where cases of doping are concerned, it is expressly permitted for different ADOs to conduct different results management activities.
- 21.2. Article 7.1 Code sets out more detailed rules about who is responsible for conducting results management. These rules are incorporated by reference and shall apply mutatis mutandis.
- 21.3. Results management is conducted by Doping Authority Netherlands, unless these regulations stipulate otherwise or unless results management is conducted in whole or in part by another ADO (in accordance with the Code and the ISRM).
- 21.4. In the case of international events, Doping Authority Netherlands can agree to accept full or partial responsibility for results management if requested to do so by an international federation (either directly or via the federation in question).
- 21.5. Articles 7.4, 7.5 and 7.6 Code are fully applicable and are included by reference.

Article 22 Assessment of possible violations

- 22.1. Results management by Doping Authority Netherlands will involve a review of all adverse analytical findings, atypical findings, other control results and other possible violations and any investigations of such violations. When conducting results management, Doping Authority Netherlands applies the relevant provisions of the World Anti-Doping Code, the ISTI and the ISRM.
- 22.2. In the context of the assessment referred to in the previous paragraph, Doping Authority Netherlands may consult with the person concerned, the federation, other NADOs, the international federation and WADA, and exchange data with those organisations for that purpose, including confidential personal data.

- 22.3. Doping Authority Netherlands determines, on the basis of the relevant provisions of the World Anti-Doping Code and the ISRM, whether there is a possible violation.
- 22.4. If, after the review referred to this Article, Doping Authority Netherlands believes there is a possible violation, an adverse analytical result (where applicable) will be classified provisionally as a positive result.
- 22.5. The assessment and notification of an anti-doping rule violation will be conducted in accordance with the ISRM.

Article 23 Analysis of B sample

- 23.1. If there is an adverse analytical result for the A sample, the person concerned is entitled to have the B sample analysed, provided that he or she has indicated in time and correctly that he or she wishes to make use of this right in accordance with the relevant provisions of the ISRM.
- 23.2. Doping Authority Netherlands may attach conditions to the entitlement to the analysis of the B sample referred to in Article 23.1, including the reimbursement by the person concerned of the costs of the analysis of the B sample, before this analysis is conducted. If the person concerned fails to comply in full and in good time with the conditions set, the person concerned will be considered to have waived his or her entitlement to the analysis of the B sample and the result of the analysis of the A sample will become definitive and considered to be a positive result.
- 23.3. The date, time and location at which the analysis of the B sample will take place in accordance with the relevant provisions of the ISRM and the ISL.
- 23.4. Attendance, at the member's own expense, at the analysis of the B sample in the laboratory will comply with the provisions of the ISL. If it is impossible to be present at the analysis of the B sample, this shall not invalidate the result of the analysis of the B sample. The ISL may set out rules about attendance at the analysis of the B sample and about the rights of the person concerned in this respect. If the ISL differs in this respect from the provisions in these regulations, the rules stated in the ISL will take precedence.

Article 24 Communication of control results and anti-doping rule violations

- 24.1. The communication of control results and anti-doping rule violations will comply with the relevant provisions of the ISRM.
- 24.2. The fact that the person concerned has been informed of a negative result does not mean that, with respect to the doping control that has been carried out:
 - a. there has definitively been no violation of Article 3. Re-analysis or further investigation may at some later time lead to the conclusion that the result is nevertheless positive; and
 - b. no disciplinary action can be taken against the person concerned on the basis of a violation of Article 3 or any other anti-doping rule violation.
- 24.3. Failure to comply with the time limits referred to in this Article will not lead to the inadmissibility of the possible violation. On the other hand, it may lead to the earlier commencement of a period of ineligibility (in accordance with the relevant provisions of Article 51).

Article 25 Further investigation

- 25.1. Doping Authority Netherlands may conduct or order any tests on a sample that are required to determine whether there has been any anti-doping rule violation. This may be an atypical finding or a test mentioned in an International Standard or another document adopted by WADA. If a laboratory reports an atypical finding, Doping Authority Netherlands shall conduct an assessment to determine whether there is (i) an applicable relevant therapeutic use exemption, (ii) any departure in the sense of Article 34 and/or (iii) it is apparent that the ingestion of the prohibited substance was through a permitted route
- 25.2. Doping Authority Netherlands may issue instructions for the analysis of the B sample before the completion of the further investigation. In that case, Doping Authority Netherlands shall inform the person concerned accordingly prior to the analysis of the B sample in accordance with the procedure described in these regulations.
- 25.3. If one or more non-specified substances and/or prohibited methods (in prohibited quantities) are found in the A sample in combination with an atypical finding, the disciplinary hearings may proceed on the basis of the non-specified substance and/or prohibited method found, even if the atypical finding has not yet been investigated. In such a case, Doping Authority Netherlands will decide whether or not the further investigation referred to in these regulations and/or the prohibited list will take place.

Article 26 Provisional suspension

- 26.1. Provisional Suspensions for possible violations are determined exclusively by these regulations. Doping Authority delegates the task and competence to impose provisional suspensions to the federation in accordance with these Regulations, the World Anti-Doping Code and the ISRM.
- 26.2. A provisional suspension has the same consequences as ineligibility (see Article 52.1).
- 26.3. In the case of an adverse analytical result or an adverse passport finding, the federation will promptly impose on the person concerned, after:
 - a. the completion of the assessment referred to in Article 22 and notification of the person concerned about this result; or
 - b. the completion of the assessment process for an adverse passport result and the notification of the person concerned about that result,a provisional suspension, unless the result relates to a specified substance or method.
- 26.4. The mandatory provisional suspension referred to in the previous paragraph may be lifted by the federation, the ADO or the disciplinary body if:
 - a. the person concerned demonstrates, (i) in the context of the preliminary hearing as referred to in Article 26.8 or (ii) before the disciplinary body, that the violation likely involves a contaminated product;
 - b. the violation relates to substances of abuse and the person concerned demonstrates, (i) at the preliminary hearing or (ii) before the disciplinary

body, that he or she is entitled to a reduced period of ineligibility in accordance with the relevant provisions of Article 38b;

- c. the result of the analysis of the B sample does not confirm the analysis of the A sample in whole or in part; or
- d. a retroactive therapeutic use exemption is granted as a result of which Article 15.1 applies.

There is no recourse to appeal against decisions of the disciplinary body referred to in Article 26.4(a) not to lift the mandatory provisional suspension.

- 26.5. The federation is competent to impose a provisional suspension on the person concerned in the case of possible violations not covered by Article 26.3.
- 26.6. The ISRM sets out more detailed rules on the commencement and termination of a provisional suspension. Those rules are incorporated by reference.
- 26.7. The federation can delegate the authority referred to in the previous paragraph to impose provisional suspensions to, for example, a board member or member of the board of the federation with individual authority to represent the federation.
- 26.8. The federation or the ADO (if the ADO imposed the provisional suspension) shall offer the person concerned the possibility of a provisional hearing within twenty-one days after the imposition of a provisional suspension. The provisional hearing will be conducted by the federation body which has imposed the provisional suspension.
- 26.9. Persons concerned who do not participate in competitions may voluntarily accept the imposition of a provisional suspension on their own initiative if they do so within ten days of being notified about the anti-doping rule violation.¹⁰ Other persons concerned may, on their own initiative, voluntarily accept a provisional suspension if they do so before:
 - a. the end of a period of ten days after (i) notification of the analytical result of the B sample, (ii) the waiving of the right to the analysis of the B sample or (iii) notification of another anti-doping rule violation; or (if later);
 - b. the date on which the person concerned first participates in a competition following such notification.

In the case of voluntary acceptance as referred to in Article 26.9, the provisional suspension will have the full effect referred to in Article 26.2, it being understood that, at any time after the voluntary acceptance of a provisional suspension, a person concerned may withdraw that acceptance, in which case the period of a provisional suspension completed until that point in time may not be deducted from a period of ineligibility.

The person concerned must immediately report the voluntary acceptance of a provisional suspension in writing to Doping Authority Netherlands. The duration of the voluntarily accepted provisional suspension may be deducted from a period of ineligibility only if the person concerned has fulfilled this condition.

Doping Authority Netherlands will inform the relevant international federation as well as WADA about the voluntary acceptance of a provisional suspension.

- 26.10. In cases where a possible violation relates to Article 3, the provisional suspension will be terminated if the result of the analysis of the B sample does not confirm the result of the analysis of the A sample for any of the prohibited substances, metabolites or markers found in the A sample. If a provisional suspension has been imposed pursuant to several possible violations, the provisional suspension remains in force even if the analysis of the B sample does not confirm the result

¹⁰ The voluntary acceptance by a person concerned of the imposition of a provisional suspension means that the person concerned accepts the effect, scope and application of Article 52.1.

of the analysis of the A sample for any of the prohibited substances, metabolites or markers found in the A sample.

- 26.11 If the person concerned or his or her team is withdrawn from a contest, competition or event, and the analysis of the B sample fails to confirm the analysis of the A sample, the person concerned or the team may, after notification has been given in accordance with the ISRM, resume participation in the competition if that is possible without affecting the course of the contest, event or competition.
- 26.12. Doping Authority Netherlands or the federation may, in cases in which that is necessary or relevant, for example because of how the competition is organised or because of a selection procedure for an international competition, decide to notify other persons concerned (such as one or more relevant teams, associations or other legal entities) about any provisional suspension that has been imposed. Any notification of this kind will not include information about the nature and circumstances of the possible violation or any specific information in that regard.
- 26.13. Should a provisional suspension not be imposed in accordance with the provisions of this Article and/or the ISRM, that will not affect the question of whether there has been an anti-doping rule violation.
- 26.14. In all cases in which Doping Authority Netherlands or the federation has informed the person concerned in writing about a possible violation that does not result in the imposition of a provisional suspension, the person concerned shall be given the opportunity to accept a provisional suspension voluntarily pending a decision about the possible violation.
- 26.15. Without prejudice to Articles 26.4 and 26.6, the provisional suspension ends at all times when:
- a. a final written decision is given by the disciplinary body;
 - b. the settlement becomes final and binding; and
 - c. the substantial assistance agreement becomes final and binding.

Article 27 Acceptance of anti-doping rule violations and consequences (settlement)

- 27.1. If the person concerned, after being informed by Doping Authority Netherlands of a possible violation, admits to the anti-doping rule violation and accepts the consequences that are appropriate in the view of Doping Authority Netherlands and the WADA (each at their own discretion), the person concerned may be offered a reduction in the period of ineligibility by Doping Authority Netherlands on the basis of an assessment made jointly by Doping Authority Netherlands and the WADA of:
- a. the application of Part IX-Part XI (and the corresponding provisions in the World Anti-Doping Code), with the exception of Articles 48-51, to the anti-doping rule violation in question;
 - b. the seriousness of the violation;
 - c. the degree of fault of the person concerned; and
 - d. how promptly the person concerned has admitted the violation.
- This period of ineligibility may begin at the earliest on the day on which the last anti-doping rule violation has been committed. In the case of a violation of Article 3, this will be the day upon which the sample leading to a positive result is taken.

- 27.2. When this Article is applied, the person concerned must in any case serve at least half of the period of ineligibility referred to in the previous paragraph starting on:
- a. the date on which the person concerned has accepted the imposition of a sanction and subsequently respected that sanction; or (if earlier)
 - b. the date on which the person concerned has accepted and subsequently complied with a provisional suspension.
- 27.3. The decision of WADA and Doping Authority Netherlands about (i) whether or not to offer a settlement proposal and/or agree a settlement, (ii) the extent of the sanction reduction offered and/or agreed upon in the event of the application of this Article, and (iii) the starting date of the period of ineligibility in the event of an agreed settlement, cannot be determined or assessed by a disciplinary body and are not subject to appeal pursuant to Part XII.
- 27.4. If the person concerned makes a request to that effect in the context of exploring a possible settlement proposal, Doping Authority Netherlands will give the person concerned the opportunity to discuss the admission of an anti-doping rule violation with Doping Authority Netherlands, subject to a without prejudice agreement. The definition of 'without prejudice agreement' is: (for purposes of Articles 27 and 46) a written agreement between an ADO and an athlete or other person that allows the athlete or other person to provide information to the ADO in a defined time-limited setting with the understanding that, if an agreement for substantial assistance or a case resolution agreement is not finalized, the information provided by the athlete or other person in this particular setting may not be used by the ADO against the athlete or other person in any results management proceeding under the Code, and that the information provided by the ADO in this particular setting may not be used by the athlete or other person against the ADO in any results management proceeding under the Code. Such an agreement shall not preclude the ADO, athlete or other person from using any information or evidence gathered from any source other than during the specific time-limited setting described in the agreement.
- 27.5. Accepting a settlement proposal means that the person concerned:
- a. admits to the anti-doping rule violation(s) and accepts the relevant consequences;
 - b. accepts the settlement proposal, including in any case the consequences, as well as the starting date of the ineligibility period; and
 - c. accepts all consequences of the ineligibility as stated in these regulations and the World Anti-Doping Code.
- 27.6. If, after a settlement has been agreed, new facts and/or facts previously unknown to the WADA and/or Doping Authority Netherlands become known to them which relate to the anti-doping rule violation(s) referred to in the first paragraph of this Article, both the WADA and Doping Authority Netherlands may, after mutual consultation, reopen the case that has been settled. The reopening of a case that has been settled is not subject to any time limit, other than the statute of limitations referred to in the World Anti-Doping Code.
- 27.7. A decision by WADA or Doping Authority Netherlands to reopen a case that has been settled as referred to in the previous paragraph is subject to appeal pursuant to Part XII.
- 27.8. The reopening of a case that has been settled has no suspensive effect. If, at the point in time at which the case that has been settled is reopened, the agreed period of ineligibility has not yet come to an end, it therefore continues to be effective. If, at the point in time at which the case that has been settled is reopened, the agreed period of ineligibility has already come to an end, the

federation or ADO may impose a provisional suspension on the person concerned. The person concerned may appeal against the imposition of this provisional suspension in accordance with the provisions of Part XII.

- 27.9. If the person concerned accepts WADA and Doping Authority Netherlands' settlement proposal, results management will not be implemented further and there will be no further disciplinary action in relation to the anti-doping rule violation in question. If proceedings have already been initiated for an anti-doping rule violation and the possible violation is pending before the disciplinary body, the party who has reported the violation after the settlement has been reached will withdraw the charge and the disciplinary body will discontinue the hearing relating to the possible violation.
- 27.10. Failure to comply correctly, fully and/or in a timely manner with the consequences agreed in the settlement falls within the scope of Article 52.5.

Part VI Disciplinary proceedings

Article 28 General

- 28.1. Disciplinary action and hearings, including in any case the determination of the sanction and the consequences, will be conducted in accordance with the provisions of these regulations and the applicable disciplinary law, unless (i) these regulations stipulate otherwise or (ii) these components of results management are implemented by another ADO.
- 28.2. An international federation may transfer the disciplinary proceedings relating to the possible violation, if that violation relates to a member, to Doping Authority Netherlands and the federation.
- 28.3. Doping proceedings relating to members may, if the federation does not hear them, be heard by any competent ADO. In cases of this kind, Doping Authority Netherlands will be entitled, in order to safeguard the confidentiality of the proceedings, to postpone reporting these cases to the federation until the completion of the disciplinary proceedings at the latest.
- 28.4. If a disciplinary body arrives at a definitive decision that it is not competent to examine a possible violation, or decides that the federation and/or Doping Authority Netherlands do not have any jurisdiction in the present case, this authority or jurisdiction will automatically be delegated to the international federation.
- 28.5. Doping Authority delegates the task and competence regarding disciplinary Proceedings (including the imposition of sanctions) to the federation in accordance with these Regulations, the World Anti-Doping Code and the ISRM. The federation is required to comply with the World Anti-Doping Code and ISRM requirements regarding operational and institutional independence.

Article 29 Instigating proceedings

- 29.1. If Doping Authority Netherlands is of the opinion that there is a possible violation, Doping Authority Netherlands will report this in writing to the federation, stating grounds, unless:

- a. Doping Authority Netherlands reports the possible violation to another relevant ADO;
 - b. Article 27 applies;
 - c. Article 46 applies; or
 - d. Doping Authority Netherlands considers that, in the context of one or more ongoing investigations, the possible violation cannot yet be reported.
- 29.2. If Doping Authority Netherlands itself instigates doping proceedings with the disciplinary body, Doping Authority Netherlands may inform the federation in advance about the possible violation before instigating those proceedings. However, Doping Authority Netherlands is not obliged to do so.
- 29.3. The federation and Doping Authority Netherlands are authorized to instigate proceedings with the disciplinary body. Doping Authority Netherlands will, in principle, avail itself of this authority only if and in so far as the federation fails to instigate proceedings.
- 29.4. Proceedings shall be instigated within the period determined by the statute of limitations referred to in Article 55. If the possible violation relates to Article 3, the federation shall instigate proceedings related to the violation within six weeks after Doping Authority Netherlands has informed the federation in writing about the definitive positive result. If this time limit is exceeded, Doping Authority Netherlands may instigate proceedings. In that case, a period of six weeks starting on the day on which Doping Authority Netherlands becomes cognisant of the federation's failure to instigate proceedings applies to the instigation of proceedings by Doping Authority Netherlands. Unless the period determined by the statute of limitations set out in Article 55 has been exceeded, any failure to instigate proceedings for a possible violation in good time will expressly not render the instigation of proceedings inadmissible. On the other hand, it may lead to the application of Article 51.2.
- 29.5. ADOs other than Doping Authority Netherlands can report possible violations to Doping Authority Netherlands, which may then notify the relevant federation. Both Doping Authority Netherlands and the federation may initiate proceedings for such possible violations, subject only to the statute of limitations stated in Article 55.
- 29.6. The federation (or, where applicable, Doping Authority Netherlands) shall inform the person concerned, as quickly as possible but within no more than twenty-one days starting on the date upon which proceedings have been instigated, by registered mail that those proceedings have been instigated. If only Doping Authority Netherlands instigates proceedings, Doping Authority Netherlands will inform the person concerned and the federation accordingly in writing at the same time unless this has already been done as a result of the proceedings being instigated.
- 29.7. In cases where Article 27 or Article 46 is applied, no proceedings will be instigated with respect to a possible violation unless the agreement made with the person concerned lapses. If an agreement made in the context of the application of Article 27 or Article 46 lapses, the time limit referred to in Article 29.4 will not apply to the instigation of proceedings relating to the possible violation. In a case of this kind, the statute of limitations referred to in Article 55 will apply and it will start on the date upon which Doping Authority Netherlands has been informed in writing that the aforementioned agreement has lapsed.
- 29.8. Significant violations of Article 9 and/or Article 10 shall be reported to the competent authorities outside the federation.

- 29.9. Before informing the person concerned that there is a possible violation, Doping Authority Netherlands will also check in ADAMS and contact WADA and other relevant ADOs to determine whether the person concerned has already committed an anti-doping rule violation.

Article 30 Hearings

- 30.1. The provisions of the World Anti-Doping Code (and in particular, but not only, Article 8), as well as the ISRM, apply to the disciplinary hearings relating to possible violations and are incorporated by reference.
- 30.2. Doping Authority Netherlands is entitled with respect to hearings for all possible violations, including those on appeal, to participate in oral hearings, as well as any other hearings conducted in the context of the hearings relating to a possible violation, conducted by the disciplinary body and to speak at those hearings. During the hearing, Doping Authority Netherlands has the same rights and obligations as the person concerned.
- 30.3. Doping Authority Netherlands will receive all the documents, correspondence and information relating to disciplinary proceedings that the person concerned and the disciplinary body receive. The federation or the disciplinary body will provide Doping Authority Netherlands with all documents, correspondence and information at the same time as the other parties concerned, as well as all documents, correspondence and information that the person concerned sends to the federation and/or the disciplinary body.
- 30.4. The federation will forward the written reasoned decision of the disciplinary body to the person concerned and to Doping Authority Netherlands. Doping Authority Netherlands will be responsible for informing WADA and (where applicable) other relevant ADOs about the decision.

Article 31 Written pleadings

- 31.1. Doping Authority Netherlands and the federation are competent in the case of a possible violation to submit written pleadings to the disciplinary body stating their position in writing within 31 days after receipt of the statement of defence and the request to respond to that statement. Doping Authority Netherlands and the federation may also submit documents when submitting written pleadings. If the person concerned does not submit a statement of defence, the federation and Doping Authority Netherlands may submit pleadings after the deadline has passed for the submission of a statement of defence.
- 31.2. The person concerned will receive the written pleadings and any documents submitted as quickly as possible from the federation.
- 31.3. If an appeal has been lodged against a decision of the disciplinary body, Doping Authority Netherlands and the federation may submit written pleadings and documents in appeal, even if Doping Authority Netherlands or the federation is the party lodging the appeal. Written pleadings must be submitted within 31 days after the substantive appeal has been received by Doping Authority Netherlands or the federation. If Doping Authority Netherlands and/or the federation have lodged the appeal, written pleadings must be submitted within 31 days after Doping Authority Netherlands and/or the federation have received the written statement of defence in appeal.

- 31.4. If, at any time after submitting a statement of defence or an appeal, the person concerned puts forward additional defence arguments, additional grounds for appeal and/or submits additional written pleadings of another kind, Doping Authority Netherlands is in all cases entitled to submit additional written pleadings (even if Doping Authority Netherlands has lodged the appeal and also if the disciplinary body does not give Doping Authority Netherlands the opportunity, for example in the form of a request to that effect, to submit written pleadings). Additional written pleadings must be submitted within 31 days after Doping Authority Netherlands has received the additional statement of defence and/or grounds for appeal.

Article 32 In absentia proceedings

If proceedings are instigated in respect of a possible violation and if there are no contact details or no correct contact details, even after a reasonable attempt has been taken to obtain them (including contacts with the national federation and/or the relevant international federation), the hearing will take place in accordance with these regulations without communications with, contributions from and/or the participation of the person concerned without there being any conflict with the provisions of Article 30 or any other provision of these regulations.

Part VII Proof of doping

Article 33 Burdens and standards of proof

- 33.1. The burden of proof that an anti-doping rule violation has taken place rests on Doping Authority Netherlands or the federation (where Doping Authority Netherlands has delegated disciplinary proceedings to the federation as a Delegated Third Party). The standard of proof will be whether Doping Authority Netherlands has established an anti-doping rule violation to the comfortable satisfaction of the disciplinary body bearing in mind the seriousness of the allegation made. This standard of proof is in all cases greater than a mere balance of probability but less than proof beyond a reasonable doubt.
- 33.2. Barring Article 34, evidence submitted by a member accused of an anti-doping violation will be assessed on a balance of probability.
- 33.3. Where these regulations place the burden of proof upon the federation, Doping Authority Netherlands is explicitly permitted to supply the required evidence alongside or instead of the federation. This applies both to possible violations in respect of which Doping Authority Netherlands has instigated proceedings or lodged an appeal and to possible violations in respect of which the federation has instigated proceedings or lodged an appeal.
- 33.4. A single type of evidence may be adequate as a basis for a finding that an anti-doping rule violation has occurred on condition that this evidence complies with the conditions set out for evidence in these regulations.

Article 34 Methods of establishing facts and assumptions

- 34.1. Facts related to anti-doping rule violations may be proven by any reliable means,

including in any case analysis results, an admission (or an admission alone), a statement by a doping control official, and the comparison and linkage of information obtained from genetic material. In the context of disciplinary hearings for possible violations, the assessment of the reliability of evidence is made by the disciplinary body subject to the provisions set out in the remainder of this Article.

- 34.2. WADA-accredited laboratories and other approved laboratories are presumed to have conducted sample analysis and storage procedures in accordance with the ISL. The person concerned may rebut this presumption by demonstrating that (i) a departure from the International Standard for Laboratories has occurred which (ii) could reasonably have caused the adverse analytical finding or factual basis for the anti-doping rule violation.
- 34.3. If the person concerned rebuts the presumption referred to in the previous paragraph by demonstrating that a departure from the International Standard for Laboratories has occurred of the kind referred to in that paragraph, Doping Authority Netherlands shall have the burden to demonstrate that this departure did not cause the adverse analytical finding.
- 34.4. Departures from these regulations, the World Anti-Doping Code and/or any International Standard do not invalidate the control results or other evidence of an anti-doping rule violation and cannot constitute a defence against a charge of an anti-doping rule violation, on the understanding that if the person concerned demonstrates that a departure from one of the specific provisions of an International Standard mentioned below could reasonably have caused an anti-doping rule violation on the basis of an adverse analysis result or a whereabouts failure, the burden of demonstrating that departure has not caused the adverse analysis result or the whereabouts failure rests with Doping Authority Netherlands.
- 34.5. The departures mentioned in the previous paragraph may relate solely and exclusively to the following International Standards and only in the way described in this provision:
 - a. a departure from the ISTI with regard to sample collection or sample handling that could reasonably have caused an anti-doping rule violation based on an adverse analytical result, in which case the burden of demonstrating that such departure has not caused the adverse analytical result rests with Doping Authority Netherlands;
 - b. a departure from the ISRM or the ISTI with regard to an adverse passport finding that could reasonably have caused an anti-doping rule violation, in which case the burden of demonstrating that such departure has not caused the anti-doping rule violation rests with Doping Authority Netherlands;
 - c. a departure from the ISRM relating to the requirement to notify the person concerned of the opening of the B-sample that could reasonably have caused an anti-doping rule violation on the basis of an adverse analytical result, in which case the burden of demonstrating that such departure has not caused the adverse analytical result rests with Doping Authority Netherlands;
 - d. a departure from the ISRM relating to the notification of the Athlete that may reasonably have caused an anti-doping rule violation on the basis of a whereabouts failure, in which case the burden of demonstrating that such departure has not caused the whereabouts error rests with Doping Authority Netherlands;
- 34.6. Departures from an International Standard or other rule not related to (i) the collection, processing and/or analysis of a sample, (ii) an adverse passport result, or (iii) the notification of a member about a possible whereabouts error or about

- the opening of a B sample cannot constitute a defence in an anti-doping rule violation procedure and are not relevant to the question of whether a member has committed an anti-doping rule violation.
- 34.7. If the person concerned fails to establish a departure from any International Standard in the case of a possible violation, or if any departure from an International Standard has not led to the adverse analytical finding or the factual basis for the anti-doping rule violation, the positive result will constitute reliable proof to the comfortable satisfaction that there has been an anti-doping rule violation.
- 34.8. The facts established by the competent court or disciplinary body, shall be irrebuttable evidence in hearings against the athlete or other person unless the decision in the aforesaid hearings is the subject of a pending appeal or if the athlete or other person establishes that the decision violated principles of natural justice.
- 34.9. A disciplinary body may draw an inference adverse to the person concerned if, during the course of a hearing and pursuant to a request submitted in a reasonable period of time prior to the hearing, the person concerned refuses to appear at the hearing (either in person, by telephone or by a video link) and refuses to answer questions from the disciplinary body or the ADOs concerned relating to the possible violation.
- 34.10. Analytical methods or decision limits approved by WADA after consultation within the relevant scientific community or which have been the subject of peer review are presumed to be scientifically valid. Each person concerned who wishes to challenge the presumption of scientific validity stated in the previous paragraph shall, as a condition precedent to any such challenge, first notify WADA of (i) the challenge and (ii) the grounds for the challenge. The initial disciplinary body, appellate body or CAS may, at its own initiative, also inform WADA of such challenge. Upon receipt of such notification and the file relating to such challenge, WADA is entitled in the relevant proceedings, within ten days after WADA (i) has been informed by the person concerned or CAS of the challenge and (ii) has received the relevant case file, to:
- a. intervene as a party;
 - b. appear amicus curiae; or
 - c. otherwise provide evidence.

Part VIII Sporting sanctions and competition results

Article 35 Automatic disqualification of competition results

An anti-doping rule violation in an individual sport based on an in-competition doping control automatically leads to the disqualification of a result obtained in that competition, including forfeiture of any medals, points and prizes.

Article 36 Sporting sanctions and fines

- 36.1. In addition to disqualification as described in Article 35, an anti-doping rule violation occurring during or in connection with an event may, upon the decision of the competent body, lead to the disqualification of all other results obtained by the person concerned at that event, including forfeiture of all medals points and prizes. Factors to be included in considering whether to disqualify other results at

- an event include, for example: the seriousness of the anti-doping rule violation committed by the person concerned or whether the person concerned has tested negative in other doping controls conducted during the event.
- 36.2. If the person concerned can establish that he or she bears no fault or negligence in the sense of Article 44 for the violation referred to in the previous paragraph, the other competition results referred to the previous paragraph will not be disqualified unless it is likely that these results have been affected by the anti-doping rule violation.
 - 36.3. In addition to the provisions of the preceding paragraphs, all other competition results obtained after an anti-doping rule violation has occurred, through to the commencement of any provisional suspension imposed pursuant to that violation (if such there has been) or (if no provisional suspension has been imposed) the period of ineligibility, will be disqualified unless otherwise required by considerations of fairness.
 - 36.4. All competition results obtained during a period of ineligibility, including a period of ineligibility imposed retroactively, will be disqualified.
 - 36.5. All competition results obtained in contravention of Article 20a shall be automatically disqualified (with all associated consequences), unless the person concerned can demonstrate that he or she could not reasonably have known that he or she was participating in an international event or a national event.

Part IX Sanctions

Article 37 Sanction pursuant to the violation of Articles 3, 4 and 8

- 37.1. Subject to the possible application of Article 38b, the period of ineligibility for a first violation of Article 3, Article 4 or Article 8 is:
 - a. four years where the anti-doping rule violation does not involve a specified substance or a specified method unless the person concerned can establish that the anti-doping rule violation was not intentional on his or her part;
 - b. four years where the anti-doping rule violation involves a specified substance or a specified method and the ADO can establish that the anti-doping rule violation was not intentional on the part of the person concerned.
- 37.2. Subject to the possible application of Article 38b.1(a), the period of ineligibility is two years:
 - a. where the anti-doping rule violation does not involve a specified substance or a specified method and the person concerned can demonstrate that the anti-doping rule violation was not intentional on his or her part;
 - b. where the anti-doping rule violation involves a specified substance or a specified method and the ADO cannot demonstrate that the anti-doping rule violation was intentional on the part of the person concerned.
- 37.3. If the positive result relates to both a specified substance (or specified method) and a non-specified substance, the application of Articles 37.1 and 37.2 shall be assessed for each prohibited substance or method found.
- 37.4. Depending on the specific circumstances of the case, the elimination, reduction or suspension of the standard sanctions referred to in this Article may be possible on the grounds of the application of Part IX-Part XI.

Article 38 'Intent' for the purposes of the application of Parts IX and X

- 38.1. For the purposes of the application of Part IX, the term 'intent' refers to:
- a. the person concerned has engaged in conduct which he or she knew constituted an anti-doping rule violation; and/or
 - b. the person concerned engaged in one or more actions knowing that there was a significant risk that the conduct (i) might constitute an anti-doping rule violation or (ii) or result in an anti-doping rule violation, and manifestly disregarded that risk.
- 38.2. A possible violation relating to a substance that is prohibited only in competition can, until proven otherwise, not be considered intentional if the person concerned can demonstrate that:
- a. the prohibited substance is a specified substance; and
 - b. the prohibited substance was used out of competition.
- 38.3. A possible violation relating to a substance that is prohibited only in competition will not be considered intentional if:
- a. the substance is not a specified substance; and
 - b. the person concerned can demonstrate that the prohibited substance was used out of competition in a context unrelated to sport performance.
- 38.4. All references in Part IX to the term 'intent' are references to that term in the sense of Article 38.1.

Article 38a Aggravating circumstances

- 38a.1. If Doping Authority Netherlands demonstrates in an individual case concerning an anti-doping rule violation other than a violation of Article 9 (trafficking), Article 10 (administration or attempted administration), Article 11 (complicity or attempted complicity) or Article 13 (discouragement or retaliation) that there are aggravating circumstances justifying the imposition of a longer period of ineligibility than the standard sanction, the period of ineligibility that is otherwise applicable will be extended by an additional period of ineligibility of a maximum of two years, depending on:
- a. the seriousness of the violation; and
 - b. the nature of the aggravating circumstances,
- unless the person concerned can demonstrate that he or she did not knowingly commit the anti-doping rule violation.
- 38a.2. Aggravating circumstances include circumstances in which a person concerned is involved or in which the person concerned has carried out acts that may justify the imposition of a longer period of ineligibility than the standard sanction. Such circumstances and actions shall in any case include but are not limited to:
- a. the person concerned has used or possessed more than one prohibited substance or method;
 - b. the person concerned has used or possessed a prohibited substance or method on more than one occasion;
 - c. the person concerned has committed several anti-doping rule violations;
 - d. a normal person would be likely to benefit from the performance-enhancing effects of the anti-doping rule violation(s) after the otherwise applicable period of ineligibility;

- e. the person concerned has engaged in deceptive or obstructive conduct with a view to preventing the detection, disciplinary hearing and/or adjudication of a anti-doping rule violation; and
- f. the person involved has been involved in acts and/or conduct that are covered by Article 7 (manipulation) during results management.

The examples of circumstances and behaviour described in this paragraph are not exhaustive. Other similar circumstances or behaviour may therefore also justify the imposition of a longer period of ineligibility.

Article 38b Substances of abuse

- 38b.1. Without prejudice to the application of Articles 37 and 38, the following shall apply when the anti-doping rule violation relates to substances of abuse only:
- a. if the athlete can prove that the ingestion or use took place out of competition and was not linked to sporting performance, the period of ineligibility is three months, which may be reduced to one month if the person concerned satisfactorily completes a drug abuse treatment programme approved by Doping Authority Netherlands. This period of ineligibility may not be reduced on the basis of the application of Article 45; and
 - b. if the intake, use or possession has taken place in competition and the person concerned can demonstrate that the circumstances of the ingestion, use or possession were not linked to sporting performance, the intake, use and/or possession will not be considered intentional in the sense of Article 38 and will not constitute a basis for determining that there are aggravating circumstances pursuant to Article 38a.

38b.2. This Article can be applied only to the following anti-doping rule violations: Article 3, Article 4 and Article 8.

Article 39 Sanction pursuant to a violation of Article 5 and Article 7

The period of ineligibility for a first violation of Article 5 or Article 7 will be four years, subject to a possible reduction or suspension pursuant to Articles 45 through 49, unless:

- a. in the case of a violation of Article 5, the person concerned can demonstrate that he or she did not intentionally commit the anti-doping rule violation, in which case the period of ineligibility will be two years;
- b. the person concerned can demonstrate that there are exceptional circumstances which justify a reduction in the period of ineligibility, in which case the period of ineligibility will be two to four years, depending on the degree of fault on the part of the person concerned; or
- c. the person in question is a protected person or a recreational athlete, in which case the period of ineligibility is a maximum of two years and at least a reprimand without any period of ineligibility, depending on the degree of fault of the person concerned.

Article 40 Sanction for the violation of Article 6

- 40.1. For a first violation of Article 6, the period of ineligibility is two years, which may be reduced, depending on the degree of fault of the person concerned, to a period of ineligibility of at least one year.
- 40.2. The option of reducing the standard period of ineligibility of two years referred to in the previous paragraph is not available if:
- a. there is a pattern of last-minute whereabouts changes on the part of the person concerned; and/or

- b. there is a pattern of other conduct that raises a serious suspicion that the person concerned was trying to avoid being available for a doping control.
- 40.3. Factors to be taken into consideration during the application of these regulations when assessing the degree of fault include: (i) the level of experience of the person concerned, (ii) whether the person concerned is a protected person at the time of the anti-doping rule violation, (iii) the degree of risk that should have been perceived by the person concerned, (iv) the level of care and investigation exercised by the person concerned in relation to what should have been the perceived level of risk and (v) special considerations such as an impairment. When assessing the degree of fault of the person concerned, the circumstances considered must be specific and relevant to explain the departure by the person concerned from the standard of behaviour that may be expected from an athlete/elite athlete.

Article 41 Sanction for the violation of Articles 9, 10 and 13

- 41.1. Subject to potential reduction or suspension pursuant to Articles 45 through 49, the period of ineligibility will be between four years and a lifetime for a first violation of Article 9 or Article 10, depending on the seriousness of the violation.
- 41.2. A violation of Article 9 or Article 10 involving a protected person will be considered to be particularly serious and will result in lifetime ineligibility if:
- a. it is committed by athlete support personnel; and
 - b. it is not related to a specified substance.
- 41.3. The period of ineligibility for a first violation of Article 13 will be at least two years and a maximum of a lifetime depending on the seriousness of the conduct involved in the violation.

Article 42 Sanction for the violation of Article 11

Subject to potential reduction or suspension pursuant to Articles 45 through 49, the period of ineligibility will be at least two years and a maximum of a lifetime for a first violation of Article 11 depending on the seriousness of the violation.

Article 43 Sanction for the violation of Article 12

For a first violation of Article 12, the period of ineligibility will be two years, with the possibility, depending on the degree of fault on the part of the person concerned and the other circumstances of the case, of a reduction to a period of ineligibility of at least one year.

Part X ***Imposition of sanctions and reduction of sanctions***

Article 44 No fault or negligence

- 44.1. There is no fault or negligence if the person concerned can establish that he or she did not know or suspect and, despite all possible due care, could not have known or suspected, that he or she:

- a. had used, ingested or been administered the prohibited substance and/or prohibited method; or
 - b. had committed an anti-doping rule violation.
- 44.2. If the anti-doping rule violation constitutes a violation of Article 3, an additional requirement is that there can be no fault or negligence only if the person concerned has established how the prohibited substance and/or the prohibited method has entered his or her body. This additional requirement does not apply if the person involved is a protected person or a recreational athlete at the time the anti-doping rule violation is committed.
- 44.3. If the person concerned demonstrates in an individual case that he or she bears no fault or negligence, then the applicable period of ineligibility will not be imposed.
- 44.4. This Article will apply only in exceptional circumstances, for example when a person concerned can establish that, despite all due precautions and care, he or she has been victim of sabotage by a third party.
- 44.5. This Article will not apply in the following cases:
- a. a positive test resulting from the ingestion, use, administration and/or application of a contaminated product, a mislabelled or contaminated nutritional supplement. Members are responsible for what they use or ingest and they are required to be aware of the risks of using nutritional supplements;
 - b. the administration of a prohibited substance or prohibited method by the athlete support personnel without the person concerned being informed. Members are responsible for their choice of support personnel and for advising their support personnel that they cannot be given any prohibited substance or prohibited method; and/or
 - c. sabotage of the food or drink of the person concerned by a spouse, any persons with whom they cohabit or any family member, a coach or other person within the circle of associates of the person concerned. Members are responsible for what they use or ingest and for the conduct of those persons to whom they entrust access to their food and drink.
- 44.6. This Article applies only to the imposition of sanctions; it is not applicable to the determination of whether an anti-doping rule violation has occurred.
- 44.7. By contrast with the other provisions of Part X in which the term 'fault' is used, the definition of 'fault' is expressly excluded from application to Article 44. Nor will the factors listed in Article 40.3 for the assessment of the degree of fault of the person concerned apply to Article 44.
- 44.8. Notwithstanding the above provisions of this Article, Article 44 cannot be applied if:
- a. the person concerned cannot refute the presumption of intent referred to in Article 37.1(a);
 - b. intent is involved, either to establish whether an anti-doping rule violation has been committed or in the sense of Article 38.1.

Article 45 No significant level of fault or negligence

- 45.1. There is no question of a significant level of fault or negligence if the person concerned has demonstrated that his or her fault or negligence is, given the

circumstances of the case and taking into account the criteria referred to in Article 44.1, not significant in relation to the anti-doping rule violation.

- 45.2. If the anti-doping rule violation constitutes a violation of Article 3, an additional requirement is that there can be no significant fault or negligence only if the person concerned has demonstrated how the prohibited substance and/or the prohibited method has entered his or her body. This additional requirement does not apply if the person involved is a protected person and/or a recreational athlete at the time the anti-doping rule violation is committed.
- 45.3. If (i) there is a violation of Article 3, Article 4 or Article 8, (ii) the anti-doping rule violation is linked to a **specified substance** (which is not a substance of abuse) or a specified method, and (iii) the person concerned can demonstrate that there is no significant fault or negligence on his or her part, the minimum sanction will be:
 - a. a reprimand and no period of ineligibility, and
 - b. a maximum period of ineligibility of two years, depending on the degree of fault of the person concerned.
- 45.4. Where the anti-doping rule violation involves (i) a violation of Article 3, Article 4 or Article 8, (ii) the person concerned has demonstrated no significant fault or negligence and (iii) the person concerned has demonstrated that the prohibited substance that has been detected (which is not a substance of abuse) comes from **a contaminated product**, the minimum sanction will be:
 - a. a reprimand and no period of ineligibility, and
 - b. a maximum period of ineligibility of two years, depending on the degree of fault of the person concerned.
- 45.5. If (i) there is a violation of Article 3, Article 4 or Article 8, and (ii) the person concerned demonstrates in an individual case in which Article 45.3 and Article 45.4 are not applicable that he or she bears no significant fault or negligence, the otherwise applicable period of ineligibility may be reduced depending on the degree of fault of the person concerned, but the reduced period of ineligibility may never be less than one half of the otherwise applicable period of ineligibility. If the otherwise applicable period of ineligibility is a lifetime, the reduced period of ineligibility pursuant to this Article may not be less than eight years.
- 45.6. If (i) the anti-doping rule violation is committed by a **protected person or recreational athlete** and (ii) this protected person or recreational athlete can demonstrate that there has been no significant fault or negligence on his or her part, the sanction will be at least a reprimand without any period of ineligibility and at most a period of ineligibility of two years depending on the degree of fault on the part of the protected person or recreational athlete concerned. This paragraph cannot be applied if the anti-doping rule violation relates in whole or in part to a substance of abuse.
- 45.7. This Article applies only to the imposition of sanctions; it is not applicable to the determination of whether an anti-doping rule violation has occurred.
- 45.8. If Doping Authority Netherlands and/or another ADO has demonstrated that there has been intent on the part of the person concerned in the case of a violation of Article 3, Article 4 and Article 8 relating to a specified substance:
 - a. Article 45 may not be applied; and
 - b. the period of ineligibility will be four years unless Article 46, Article 47 and/or Article 48 are applied.

- 45.9 If Doping Authority Netherlands and/or another ADO has not demonstrated intent on the part of the person concerned in the case of a violation of Article 3, Article 4 and Article 8 relating to a specified substance:
- a. Article 45 may be applied but only if the person concerned can demonstrate that he or she qualifies for a sanction reduction pursuant to Article 45; and
 - b. the sanction will be at least a reprimand and a maximum of two years of ineligibility depending on the degree of fault of the person concerned. Sanction reduction will be possible only if (i) the person concerned has established that he or she bears no significant fault or negligence, and (ii) the person concerned fulfils the conditions for the application of Article 45.3, Article 45.4 or Article 45.5. If the person concerned cannot fulfil these conditions, the period of ineligibility will be two years unless Article 46, Article 47 and/or Article 48 are applied.
- 45.10 If, in the case of a violation of Article 45.11, Article 4 and Article 8 in respect of a non-specified substance, the person concerned has not demonstrated that the violation was not intentional:
- a. Article 45 may not be applied; and
 - b. the period of ineligibility will be four years, unless Article 46, Article 47 and/or Article 48 are applied.
- 45.11. If, in the case of a violation of Article 3, Article 4 and Article 8 in respect of a non-specified substance, the person concerned has demonstrated that the violation was not intentional:
- a. Article 45 may be applied, but only if the person concerned can determine that he or she qualifies for a sanction reduction pursuant to Article 45; and
 - b. the period of ineligibility may be reduced depending on the degree of fault of the person concerned, but never to less than half of the otherwise applicable period of ineligibility. Sanction reduction will be possible only if (i) the person concerned has established that he or she bears no significant fault or negligence, and (ii) the person concerned fulfils the conditions for the application of Article 45.3, Article 45.4 or Article 45.5. If the person concerned cannot fulfil these conditions, the period of ineligibility will be two years unless Article 46, Article 47 and/or Article 48 are applied.
- 45.12. For the application of Article 45:
- a. the disciplinary body shall first determine which provision may apply: Article 45.3, 45.4 or 45.5;
 - b. the disciplinary body shall then determine whether the person concerned has demonstrated that he or she bore no significant fault or negligence at the time of the anti-doping violation and whether the other conditions in Articles 45.3, 45.4 and 45.5 have been satisfied. To this end, the disciplinary body shall apply Article 45.1, Article 1.46 and Article 40.3, in conjunction with Article 44.1. If an anti-doping rule violation of Article 3 is involved, the disciplinary body shall apply Article 45.2;
 - c. the disciplinary body shall, if it finds that the person concerned has demonstrated that he or she qualifies for a sanction reduction pursuant to Article 45, determine the extent of the sanction reduction on the basis of the degree of fault of the person concerned and apply Article 1.46 and Article 40.3.
- 45.13. Article 45 cannot be applied in the following situations:
- a. if there has been intent on the part of the person concerned;
 - b. in the case of an anti-doping rule violation in which intent is an element of the violation (as in, for example, Article 7, Article 9, Article 10 and Article 11);
 - c. in the case of an anti-doping rule violation in which intent is an element of a particular sanction (as in, for example, Article 37); and

- d. there is already a possible sanction reduction on the basis of the degree of fault of the person concerned (see Article 40.1 and Article 43).

45.14. All options for sanction reduction as stated in Article 45 are mutually exclusive and not cumulative.

Article 46 Substantial assistance

- 46.1. Doping Authority Netherlands can, **prior** to (a) an appellate decision under Article 59, or (b) the end of the time for appeal applicable to the decision of the disciplinary body, suspend some of the consequences that have been or are to be imposed (with the exception of the disqualification of competition results and the obligatory disclosure pursuant to the World Anti-Doping Code) if the person concerned has provided substantial assistance to an ADO, a criminal authority and/or a professional disciplinary body. Doping Authority Netherlands shall document the agreement with the athlete or other person to provide substantial assistance in a written substantial assistance agreement. The substantial assistance agreement includes an acceptance of consequences agreement without the athlete or other person providing substantial assistance.
- 46.2. Substantial assistance is to be considered to have been provided if the following conditions have been met:
 - a. the assistance leads to the discovery of a possible violation by an ADO or the initiation of proceedings relating to an anti-doping rule violation, with the possible violation or anti-doping rule violation being committed by a person other than the person who provided the substantial assistance;
 - b. the assistance has led to a criminal authority or a disciplinary body discovering, reporting or initiating proceedings relating to a criminal offence or an infringement of professional rules, with the criminal offence or infringement being committed by a person other than the person who provided substantial assistance and with the information provided by the person providing substantial assistance being made available to Doping Authority Netherlands;
 - c. the assistance has led to WADA initiating proceedings against a signatory of the World Anti-Doping Code, a WADA-accredited laboratory or athlete biological passport management unit (as defined in the ISL) for non-compliance with the World Anti-Doping Code, an International Standard or a Technical Document; or
 - d. the assistance has led to a criminal authority or disciplinary body demonstrating a criminal offence or an offence against professional or sport integrity rules relating to ethics in sport other than doping. This form of substantial assistance as a basis for the suspension of consequences pursuant to Article 46 is possible only with the consent of WADA.
- 46.3. In situations where Article 46.1 does not apply, Doping Authority Netherlands may suspend part of the consequences imposed (with the exception of the disqualification of competition results and the mandatory publication pursuant to the World Anti-Doping Code):
 - a. if the person concerned has provided substantial assistance; and
 - b. with the approval of the international federation and WADA.Doping Authority Netherlands shall document the agreement with the athlete or other person to provide substantial assistance in a written substantial assistance agreement.
- 46.4. Additional conditions required for substantial assistance:
 - a. the person concerned has provided all information available to him or her relating to anti-doping rule violations, criminal offences or infringements of professional or sporting rules relating to integrity in sport other than doping

- correctly and completely, either in a written statement signed by him or her or in a recorded interview;
- b. the person concerned cooperates in full with the investigation into a possible violation or other case, as well as with the proceedings to which the information he or she has supplied relates by, for example, acting as a witness in a hearing if Doping Authority Netherlands or the disciplinary body asks him or her to do so; and
 - c. the information supplied by the person concerned shall be credible and (i) be an important element in a case resulting in proceedings or (ii), if there have been proceedings, constitute adequate grounds for the possible instigation of proceedings.
- 46.5. The extent to which the period of ineligibility can be suspended on the basis of Article 46 depends on:
- a. the seriousness of the anti-doping rule violation committed by the person concerned; and
 - b. the importance of the substantial assistance provided for the elimination of (i) doping in sport, (ii) non-compliance with the Code and/or (iii) violations of ethical rules in sport.
- However, no more than three-quarters of the period of ineligibility that would have been imposed without the application of Article 46 may be suspended. If the period of ineligibility without the application of Article 46 would have been a lifetime, the non-suspended period must be no less than eight years. In order to determine the period of ineligibility that could be suspended on the basis of Article 46, any additional period of ineligibility pursuant to Article 38a will not be taken into account.
- 46.6. Should the person concerned who wishes to provide substantial assistance submit a request to that effect, Doping Authority Netherlands is authorised to enter into without prejudice agreement (as defined in Article 27.4) with the person concerned pursuant to which the person concerned may provide information relating to substantial assistance on a without prejudice basis.
- 46.7. If Doping Authority Netherlands determines that the person concerned is not cooperating adequately¹¹ and/or his or her assistance no longer meets the aforementioned conditions for substantial assistance it will:
- a. if Article 46.1 applies, terminate the substantial assistance part of the substantial assistance agreement and reinstate the consequences that were agreed on under the acceptance of consequences part of the substantial assistance agreement; or
 - b. if Article 46.3 applies, terminate the substantial assistance agreement, which will reinstate the suspended decision of the disciplinary body.¹²
- A decision by Doping Authority Netherlands to terminate (a part of) the substantial assistance agreement is subject to appeal in accordance with the provisions of Part XII.
- 46.8. To further encourage athletes and other persons to provide substantial assistance to ADOs, at the request of (i) the Doping Authority Netherlands or (ii) the person who has, or has been asserted to have, committed an anti-doping rule violation, WADA may agree at any stage of the results management process, including after a final appellate decision in doping proceedings, to what it considers to be an appropriate suspension of (a) the period of ineligibility that has been imposed and

¹¹ Cooperation may be considered to be inadequate if, for example, the person concerned fails to meet a deadline or to provide necessary information, or states that he or she is unable to provide the necessary information.

¹² The decision of the disciplinary body will take effect ipso jure immediately after the termination of the substantial assistance agreement.

other consequences or (b) the appropriate period of ineligibility and other consequences that would have been applicable without the application of Article 46 in exchange for substantial assistance.

In exceptional circumstances, WADA may agree to a suspension of the period of ineligibility and other consequences in addition to the suspensions that are otherwise possible pursuant to Article 46 in exchange for substantial assistance.

In such cases, WADA may agree to (i) the full suspension of a period of ineligibility (whether already imposed or to be imposed in the future), (ii) no return of prize money and/or (iii) no public disclosure and/or (iv) no payment of fines or costs. If Doping Authority Netherlands terminates the substantial assistance agreement in accordance with the provisions of Article 46, WADA's approval as referred to in this paragraph will automatically lapse. A decision by WADA whether or not to grant approval as referred to in this paragraph is not be subject to appeal.

46.9. If Doping Authority Netherlands suspends a period of ineligibility in whole or in part in exchange for substantial assistance, it shall report this decision to the ADOs stating the reasons for the decision with a right to appeal pursuant to Article 60. In unique circumstances in which WADA determines that this is in the best interest of anti-doping, WADA may authorise Doping Authority Netherlands to enter into a confidentiality agreement limiting or delaying the public disclosure of the substantial assistance agreement and/or the nature of substantial assistance being provided.

46.10. The suspension of all or part of a period of ineligibility is possible solely on the basis of the application of Article 46.

Article 47 Admission prior to a suspicion of an anti-doping rule violation

47.1. If:

- a. a person concerned, either prior to becoming aware of a doping control to which he or she will be subjected and which may lead to the detection of an anti-doping rule violation, or (in the case of violations other than those covered by Article 3) prior to notification of a possible violation by Doping Authority Netherlands, the international federation and/or a foreign NADO, voluntarily admits to a violation as referred to in Part II, and
- b. this admission is the only reliable evidence of the aforesaid violation at that point in time, the period of ineligibility may be reduced, but not to less than one half of the period of ineligibility otherwise applicable without that admission.

47.2. This Article may be applied only in circumstances where a member voluntarily admits to an anti-doping rule violation and that admission is the only reliable evidence of the violation at the time the admission is made. This Article may be applied only when a member admits to an anti-doping rule violation in circumstances where no ADO suspects that an anti-doping rule violation might have been committed. This Article may not be applied to circumstances in which the admission is made after the member believes he or she will be found out.

47.3. The amount by which the period of ineligibility is reduced shall be based on the likelihood that the member would have been found out had he or she not made the voluntary admission.

Article 48 Admission after notification

If the person concerned, after receiving notification by Doping Authority Netherlands of a possible anti-doping rule violation for which a period of ineligibility of four or more years applies (including any additional period of ineligibility pursuant to Article 38(a)), within 20 days of receipt of this notification:

- a. admits to the doping violation; and
- b. accepts the period of ineligibility,

the person concerned may be granted a one-year reduction of the initial period of ineligibility set by Doping Authority Netherlands. Where the person concerned receives the one-year reduction pursuant to this Article in the period of ineligibility determined, no further reduction in the period of ineligibility determined will be allowed pursuant to any other Article in these regulations.

Article 49 Multiple options for sanction reduction

49.1. For the application of Article 49:

- a. the person concerned shall first demonstrate entitlement to a sanction reduction under more than one of the following Articles: Article 44, Article 45, Article 46, Article 47 and Article 48; and
- b. before any application of Article 46, Article 47 or Article 48, the applicable period of ineligibility shall be determined (i) in accordance with the provisions of Part IX, and (ii) Article 44 and Article 45.

49.2. If the person concerned has demonstrated that he or she is entitled to a sanction reduction or suspension pursuant to Article 46, Article 47 and/or Article 48, the period of ineligibility may be reduced, but not to less than one fourth of the period of ineligibility determined pursuant to Article 49.1(b).

Article 50 Multiple violations

50.1. For a **second** anti-doping rule violation, the period of ineligibility will be the greater of:

- a. six months;
- b. a period of ineligibility between:
 - (i) the sum of the period of ineligibility imposed for the first anti-doping rule violation and the period of ineligibility that would have applied to the second anti-doping rule violation if it had been treated as if it were a first anti-doping rule violation; and
 - (ii) twice the period of ineligibility for the second anti-doping rule violation if it is treated as if it were a first violation,

The period of ineligibility within this range shall be determined on the basis of the whole of the circumstances and the degree of fault of the person concerned in relation to the second violation.

50.2. A **third** anti-doping rule violation will always result in a lifetime period of ineligibility, except if the person concerned can establish that the third violation qualifies for the application of Article 44 or Article 45, or involves a violation of Article 6, in which particular case the period of ineligibility will be at least eight years and a maximum of lifetime ineligibility.

- 50.3. The period of ineligibility established on the basis of the previous two paragraphs of this provision may be reduced pursuant to and in line with the possible application of Article 46, Article 47 or Article 49.
- 50.4. An anti-doping rule violation for which the person concerned has demonstrated no fault or negligence in the sense of Article 44 will not be considered a violation for the purposes of Article 50. Nor will an anti-doping rule violation for which a period of ineligibility has been imposed pursuant to Article 38b(a) be considered a violation for the purposes of Article 50.
- 50.5. Subject to the application of Article 50.6 and Article 50.7, an anti-doping rule violation will, for the imposition of sanctions pursuant to Article 50, be considered a second violation if it can be demonstrated that the person concerned committed the additional anti-doping rule violation **after** (i) the person concerned received a notification in respect of the first possible violation, or (ii) a reasonable attempt has been made to provide this notification. If this cannot be proved, the violations will be considered together as one separate first violation and the sanction to be imposed will be based on the violation bearing the severest penalty, including the application of aggravating circumstances (pursuant to Article 38a). Results in all competitions dating back to the earlier anti-doping rule violation will be disqualified.
- 50.6. If Doping Authority Netherlands or the federation can demonstrate that:
- a. a member has committed an additional anti-doping rule violation **prior to notification** of the first or previously observed possible violation; and
 - b. that additional violation took place at least 12 months before or after the first or previous violation,
- the period of ineligibility for the additional anti-doping rule violation will be calculated as if the additional violation were a separate first offence and this period of ineligibility will commence after the end of the period of ineligibility imposed for the first or previously observed violation (and it therefore cannot commence at the same time as this latter period of ineligibility). Where this paragraph applies, the anti-doping rule violations will together constitute a single violation for the purposes of Article 50.1 to 50.3 inclusive.
- 50.7. If Doping Authority Netherlands demonstrates that a member has committed a violation of Article 7 (tampering) with respect to the doping control process for an underlying alleged doping violation, the violation of Article 7 will be treated as an isolated first violation and this period of ineligibility will commence after the end of the period of ineligibility imposed (if applicable) for the underlying violation (and it therefore cannot commence at the same time as this latter period of ineligibility). Where this paragraph applies, the anti-doping rule violations will together constitute a single violation for the purposes of Article 50.1 to 50.3 inclusive.
- 50.8. If the Doping Authority Netherlands demonstrates that a member has committed a second or third anti-doping rule violation during a period of ineligibility, the periods of ineligibility for multiple violations shall run consecutively rather than concurrently.
- 50.9. For the purposes of this Article, a second or subsequent anti-doping rule violation must have taken place within the same ten-year period as the previous violation.

Part XI Other sanction provisions

Article 51 Commencement of period of ineligibility

- 51.1. If a period of ineligibility has already been imposed on a member for an anti-doping rule violation and that period has not yet ended, each new period of ineligibility starts on the first day after the period of ineligibility which is still in progress expires. In all other cases, unless otherwise provided in these regulations, the period of ineligibility starts on (i) the day of the decision by the disciplinary body, (ii) the day accepted for the purposes of Article 27 or Article 46, or (iii) the day on which the period of ineligibility is otherwise imposed. The latter refers to the following situations: (a) WADA, the competent international federation and/or a foreign ADO imposes a period of ineligibility or are party to a settlement pursuant to Article 10.7.1 or Article 10.8.2 Code, (b) proceedings pending with CAS are settled by the parties, or (c) the period of ineligibility is determined by a court decision.
- 51.2. If (a) there have been significant delays in the procedures referred to in Part V and/or Part VI, and (b) the person concerned can demonstrate that he or she is not responsible for these delays, the disciplinary body or the other competent body imposing the period of ineligibility may start the period of ineligibility at an earlier point in time than the one referred to in the previous paragraph but at the earliest on the day on which the anti-doping rule violation (or the last anti-doping rule violation) was committed. In the case of a violation of Article 3, this will be the day upon which the sample leading to the positive result is taken. All competition results obtained during the period of ineligibility will be disqualified, including the competition results obtained during a period of ineligibility imposed with retroactive effect.
- 51.3. For anti-doping rule violations not covered by Article 3, an ADO may need a long time to discover facts and gather the evidence necessary to demonstrate an anti-doping rule violation, for example when a member has taken steps to prevent the detection of an anti-doping rule violation. In these circumstances, it is not possible to allow the sanction to commence at an earlier point in time.
- 51.4. If a member has complied with the provisional suspension, the duration of this provisional suspension will be deducted from any period of ineligibility that may ultimately be imposed. If a member has not complied with the provisional suspension (in other words, correctly, in full and in good time), any duration of a provisional suspension that has been completed will not be deducted from any period of ineligibility that may ultimately be imposed. The same will apply to a provisional measure, provisional suspension or provisional period of ineligibility imposed by a disciplinary body.
If an Athlete or other Person voluntarily accepts a Provisional Suspension in writing from an ADO with Results Management authority and thereafter respects the Provisional Suspension, the Athlete or other Person shall receive a credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed.
- 51.5. The period in which (i) no provisional suspension has been imposed and in which (ii) there is no self-imposed ineligibility (or compliance therewith) as referred to in

the previous paragraph may not be deducted from the period of ineligibility that is ultimately imposed, regardless of whether the person concerned has refrained from competing, voluntarily or otherwise.

- 51.6 Contrary to the options set out in Article 51, there are no possibilities for allowing a period of ineligibility that is to be imposed to begin before the point of time referred to in Article 51.1.
- 51.7. In team sports, when a period of ineligibility is imposed upon a team, the period of ineligibility will, unless otherwise required by considerations of fairness, commence on:
- a. the date of the decision by the disciplinary body; or
 - b. if the entitlement to a hearing has been waived, on the date upon which the period of ineligibility is accepted or otherwise imposed, unless otherwise required by considerations of fairness.
- Any period of a provisional suspension affecting a team (whether imposed or voluntarily accepted) in accordance with the provisions in Article 26.9 will be deducted from the total period of ineligibility that is imposed.
- 51.8. It is not possible to impose the sanctions provided for in these regulations on a suspended basis in whole or in part, unless explicitly stated otherwise.
- 51.9. Any performance-enhancing effect of a prohibited substance and/or prohibited method, or any absence of such an effect, will not be taken into account in:
- a. the assessment of whether there has been an anti-doping rule violation; and
 - b. the assessment of the imposition of sanctions, in other words the determination of the sanction to be imposed for an anti-doping rule violation.

Article 52 Status during ineligibility and provisional suspension

- 52.1. The imposition of a period of ineligibility or a provisional suspension means that the person concerned, with effect from the point in time at which this consequence is imposed:
- a. is excluded from participation in any capacity whatsoever in any contest, competition and/or event organised under the auspices of (i) the federation or clubs, teams or other legal entities that are members of or otherwise affiliated to the federation, (ii) a Signatory, member of the federation or Signatory, or (iii) any other member organisation affiliated to the federation or a Signatory (or a member thereof);
 - b. is excluded from any other activity in any capacity whatsoever¹³ at or in (i) the federation or clubs, teams or other legal entities that are members of or otherwise affiliated to the federation, (ii) a Signatory, member of the federation or Signatory, or (iii) any other member organisation affiliated to the federation or a Signatory (or a member thereof), and may not receive any compensation (financial or otherwise) as referred to in Article 52.2;
 - c. may not participate in any elite or national-level sporting activity funded by a governmental agency. Persons serving a period of ineligibility or provisional suspension cannot, for example, participate in a training camp, demonstration or training organised by their federation or a club/association that is a member of or affiliated to that federation or that is financed by a governmental agency;
 - d. may not be included in any national squad and/or national team;

¹³ 'Activity' and 'capacity' include, in addition to positions as employees, officials or board members, things such as administrative activities, volunteer work and attending and/or participating in training.

- e. may not be selected for any national squad, national team and/or any other national or international representation of the federation, either as an individual or as a member of a team;
- f. may not train others or be active as an athlete support person, nor follow or undergo any training at or in (i) the federation or clubs, teams or other legal entities that are members of or otherwise affiliated to the federation, (ii) a Signatory, member of the federation or Signatory, or (iii) any other member organisation affiliated to the federation or a Signatory (or a member thereof); This will include at least training with the federation, training with a club affiliated to the federation, association or other legal entity that is affiliated to the federation, training led or supervised by a person working for the federation, whether as a volunteer or on another basis, and training with any person who has a trainer's licence or similar document;
- g. is excluded from participation in competition or sports activities that are recognised or organised by or under the auspices of a professional federation or organisation that is not a signatory of the World Anti-Doping Code; and
- h. is excluded from participation in competition or sports activities recognised or organised by or under the auspices of organisers of national or international events that are not signatories to the World Anti-Doping Code.

The person concerned may participate in anti-doping education programmes and/or rehabilitation programmes. Any performance standard accomplished period during a period of ineligibility shall not be recognised by the federation or a signatory or for any purpose.

- 52.2. A person who has been subject to a period of ineligibility or a provisional suspension continues to be subject to the obligation to cooperate with doping controls and (where applicable) to provide whereabouts information.
- 52.3. An anti-doping rule violation not involving a reduced sanction pursuant to Article 44 or Article 45 will result in the full or partial withdrawal of sport-related financial support, reimbursements or other benefits received by the person concerned from the federation.
- 52.4. A person who has been subject to a period of ineligibility of more than four years may, when four years of the period of ineligibility have elapsed, participate as an active athlete in and/or participate in local events not organised by or under the auspices of the federation or clubs, teams or other legal entities that are members of or otherwise affiliated to the federation, a Signatory, member of the federation or Signatory, or any other member organisation affiliated to the federation or a Signatory (or a member thereof) subject to the following conditions:
 - a. these events do not involve the possibility of direct or indirect qualification for a national championship, international event, or international competition;
 - b. these events cannot lead to the direct or indirect accumulation of points required to qualify for, or participate in, a national championship, international event, or international competition; and
 - c. the person concerned does not work with protected persons in any capacity whatsoever during these local sports events.
- 52.5. If the person concerned, during a period of eligibility or provisional suspension, participates in any of the activities and/or acts in any of the capacities referred to in Article 52.1:
 - a. any competition results will be automatically disqualified; and
 - b. a new period of ineligibility equal in length to the original period of ineligibility will be imposed on the person concerned. The new period of ineligibility will commence at the end of the original period of ineligibility. This new period of ineligibility, including a reprimand and no period of ineligibility, can be

adjusted depending on the level of fault on the part of the person concerned and other circumstances of the case.

If it had results management authority in relation to the imposition of the initial period of ineligibility, Doping Authority Netherlands determines whether the person concerned has failed to comply with Article 52.1, determines the new period of ineligibility and imposes it, and determines whether the person concerned qualifies for any reduction in the new period of ineligibility to be imposed. This decision by Doping Authority Netherlands may be appealed under the provisions of Part XII.¹⁴

- 52.6. In derogation from Article 52.1, the person concerned may return to train with a team or to use the facilities of a club or association affiliated to a federation during the shorter of:
- a. the last two months of the period of ineligibility; or
 - b. the last quarter of the period of ineligibility.
- 52.7. If a person concerned on whom a provisional suspension has been imposed or who has voluntarily accepted a provisional suspension does not comply with the provisions of Article 52.1, the duration of the provisional suspension, if any, will not be deducted from any period of ineligibility and any competition results obtained will be disqualified.

Article 53 Consequences for teams (where applicable)

- 53.1. If it should emerge that, in a team sport, more than two members of the same team have committed an anti-doping rule violation during an event, the competent body shall impose one or more appropriate measures on a team (such as the disqualification of the team concerned, the disqualification of one or more match or competition results of this team and/or loss of medals, points, prizes and prize money) in addition to the consequences imposed on individual team members for committing an anti-doping rule violation.
- 53.2. The federation can, for events organised under its auspices, decide to impose more severe consequences on teams in relation to events other than those referred to in the previous paragraph.
- 53.3. In sports which are not team sports but where prizes are awarded to teams, disqualification and other disciplinary action against the team when one or more team members have committed anti-doping rule violations will be as provided in the applicable rules of the relevant international federation.
- 53.4. Where more than one member of a team has been notified of an anti-doping rule violation under Part V in connection with an event, Doping Authority Netherlands will (if the event is a national event) conduct appropriate target testing of the team during the event in question.

Article 54 Review

- 54.1. Where a substance or method is prohibited and this prohibition is subsequently amended or lifted, a person concerned who has been subjected to a sanction pursuant to the original provision may ask for it to be reviewed. If a prohibited

¹⁴ Doping Authority Netherlands has established an independent committee to implement the task referred to in Article 52.5: the Compliance with Doping Sanctions Committee (CND). The CND's duties, structure and working methods have been set out in the Regulations on Compliance with Doping Sanctions, which constitute part of these regulations.

substance is removed from the prohibited list, a person concerned who at that time is still serving a period of ineligibility due to an anti-doping rule violation that is related solely to this previously prohibited substance may request a reduction in the period of ineligibility imposed. Full remission of the sanction imposed is not possible.

- 54.2. Doping Authority Netherlands delegates the task under Article 54.1 to the federation.
- 54.3. The person concerned will send a written request for the review stating reasons to the disciplinary body, which will forward the request to Doping Authority Netherlands.
- 54.4. The review request will be heard in writing. Doping Authority Netherlands is entitled to state written pleadings.
- 54.5. A decision by the disciplinary body may be appealed in accordance with Part XII.
- 54.6. A review may not be to the detriment of the person concerned.¹⁵

Article 55 Statute of limitations

No anti-doping rule violation proceeding may be initiated against the person concerned unless he or she has been notified of the possible violation, or unless notification has been reasonably attempted in accordance with the provisions of Part V, within ten years after the asserted date of the violation.

Article 56 Automatic application of decisions

- 56.1. A decision by (i) a signatory, (ii) a disciplinary body, (iii) an appellate body or (iv) CAS about an anti-doping rule violation is (after notification of the parties to the proceedings) automatically binding on, in addition to the parties involved in the proceedings, the federation (including clubs, teams or other legal entities affiliated to the federation), a signatory, a member of the federation or signatory, or any other member organisation affiliated to the federation or a signatory (or a member thereof), and has the following effect:
 - a. if such a decision entails the imposition of a provisional suspension (after a preliminary hearing or after the person concerned has accepted the provisional suspension or waived the right to a preliminary hearing, expedited hearing or expedited appeal offered in accordance with the World Anti-Doping Code), the person to whom the provisional suspension applies is automatically banned from being active and/or participating (as referred to in Article 52.1) in the organisations referred to above, including all sports, events and legal entities covered by the jurisdiction of those organisations;
 - b. if such a decision entails the imposition of a period of ineligibility (after a hearing has taken place or has been waived), the person to whom the period of ineligibility applies is automatically prohibited from being active and/or participating (as referred to in Article 52.1) in the organisations referred to above, including all sports, events and legal entities covered by the jurisdiction of those organisations;
 - c. any such decision accepting that an anti-doping rule violation has been committed is automatically binding on all the organisations referred to above, including all sports, events and legal entities covered by the jurisdiction of those organisations; and

¹⁵ A request for a review may be granted or rejected. It may not lead to a more severe sanction.

- d. if such a decision entails the disqualification of competition results obtained during a specific period of time (in accordance with Article 36 or the relevant provisions of the World Anti-Doping Code), all competition results obtained during this specific period covered by the jurisdiction of the organisations referred to above, including all sports, events and legal entities covered by the jurisdiction of those organisations, will be automatically disqualified.
- 56.2. The federation, as well as each signatory, is obliged to recognise and apply the decisions referred to in Article 56.1 and their effect (as described in the previous paragraph) on the earlier of the following dates without any further measure being required:
 - a. the date on which the signatory receives actual notification of the decision; or
 - b. the date on which the decision is entered in ADAMS.
 - 56.3. A decision by (i) an ADO, (ii) a disciplinary body, (iii) an appellate body, or (iv) CAS, to suspend or lift consequences is, without the need for further measures, binding on each signatory, as well as on the federation, on the earlier of the following dates:
 - a. the date on which the signatory receives actual notification of the decision; or
 - b. the date on which the decision is entered in ADAMS.
 - 56.4. Without prejudice to any provision of this Article, and in accordance with the provisions of Article 15.1.4 Code, a decision about an anti-doping rule violation taken by a Major Event Organisation in an expedited procedure during an event is not binding on any other signatory or on the federation unless the rules of the aforementioned organisation provide that the person to whom the decision relates has the opportunity to appeal in a non-expedited procedure.
 - 56.5. Signatories may also decide to implement doping-related decisions of ADOs not mentioned in Article 56.1.
 - 56.6. A doping-related decision of a body that is not a signatory will be applied by each signatory if the signatory judges that:
 - a. the scope of the decision is within the authority of that body; and
 - b. the anti-doping rules of that body comply with the World Anti-Doping Code.
 - 56.7. Doping Authority Netherlands may delegate the decision mentioned in Articles 56.5 and 56.6 to the federation as a Delegated Third Party. However, if Doping Authority Netherlands delegates such a decision, it shall also implement the decisions mentioned in Articles 56.5 and 56.6.

Article 57 Public disclosure

- 57.1. Article 10 and Article 14 Code contain rules in accordance with national legislation relating to:
 - a. communications with and between ADOs relating to possible violations, as well as the content of those communications;
 - b. communications with the person concerned relating to possible violations, as well as the content of those communications;
 - c. publication and/or public disclosure otherwise of (i) disciplinary decisions relating to possible violations, and (ii) consequences imposed for an anti-doping rule violation.
- 57.2. The World Anti-Doping Code contains rules relating to:
 - a. confidentiality requirements for communications relating to possible violations;

- b. the decisions relating to anti-doping rule violations which are required to state grounds in full, including (where applicable) the reason for not imposing the maximum sanction; and
 - c. the ADOs which are entitled to receive the full file relating to a possible violation before appealing the decision or judgment within fifteen days after receiving that file.
- 57.3. Any ADO that is a party to an appeal shall, in accordance with Article 14.2 Code, promptly provide the appeal decision to the athlete or other person and to the other ADOs that would have been entitled to appeal as provided under Article 60.1.
- 57.4. Doping Authority Netherlands and the federation will comply with these rules unless national legislation and regulations preclude doing so.

Part XII Appeal

Article 58 Appeal

- 58.1. Appeals can only be initiated and heard in accordance with the provisions of Part XII. The appendices and/or rules annexed to these regulations may contain additional rules concerning the lodging and hearing of appeals.
- 58.2. Decisions appealed remain in force during the appeal proceedings unless the body competent to hear the appeal determines otherwise.
- 58.3. The substantive and the legal grounds may be reviewed in their entirety in appeal proceedings; the scope of review is expressly not limited to the issues or scope of review before the initial decision maker. The appellate body may raise the sanction initially imposed to the maximum sanction permitted by the regulations or reduce the sanction to the minimum permitted. Any party to the appeal may submit evidence, legal arguments and claims that were not raised in the first-instance hearing so long as they arise from the same cause of action or relate to the same general facts or circumstances raised or addressed in the first instance hearing.

Article 59 Decisions subject to appeal

- 59.1. The following decisions are subject to appeal:
- a. a decision that an anti-doping rule violation has taken place or not;
 - b. a decision to impose consequences, or not, for an anti-doping rule violation;
 - c. a decision that an ADO lacks authority to rule on an alleged anti-doping rule violation or its consequences;
 - d. a decision by a disciplinary body that it has no jurisdiction to hear a case;
 - e. a decision that an anti-doping rule violation proceeding cannot go forward for procedural reasons (including, for example, prescription);
 - f. a decision to impose, or lift, a provisional suspension (including a decision taken in contravention of Article 26.3), as a result of a preliminary hearing;¹⁶
 - g. an ADO's failure to comply with Article 26;
 - h. a decision to reopen a case pursuant to Article 27.6;

¹⁶ If the federation does not impose a provisional suspension in accordance with Article 26.3, this circumstance will be considered a decision taken in contravention of Article 26.3 for the purposes of the application of Article 59.

- i. a decision taken pursuant to Article 54;
- j. a decision taken pursuant to Articles 52.5 and 72;
- k. a failure to comply with Article 48;
- l. a decision pursuant to Article 46 to suspend consequences or not suspend consequences, as well as the decision of Doping Authority Netherlands to terminate or not terminate (a part of) a substantial assistance agreement;
- m. a decision by Doping Authority Netherlands not to bring forward an Adverse Analytical Finding or an Atypical Finding as an anti-doping rule violation, or a decision not to go forward with an anti-doping rule violation after an investigation in accordance with the ISRM;
- n. a failure to comply with Article 56;
- o. a decision by WADA as referred to in Article 20a.2 not to make an exception to the six-month rule stated there;
- p. a decision by WADA assigning Results Management under Article 7.1 Code; and
- q. a failure to comply with Articles 7.1.4 and 7.1.5 Code.

59.2. Decisions relating to TUE requests may be appealed in accordance with Article 62.

Article 60 Right of appeal

60.1. In cases arising from participation in an international event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS.

60.2. In cases under Article 60.1 the following parties have the right of appeal:

- a. the person who is the subject of the decision being appealed;
- b. Doping Authority Netherlands;
- c. the relevant international federation;
- d. the NADO of the country (or countries) of which the person concerned is a national, where he or she resides or where the person concerned has a licence;
- e. the IOC or IPC, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and
- f. WADA.

60.3. In cases where Article 60.1 is not applicable the parties listed in Article 60.2 may appeal:

- a. decisions under Article 59.1 a-i, n and o to the national appeals body;
- b. decisions under Article 59.1 j-m and q to the National Doping Regulations Appeals Committee¹⁷.

60.4. Only the parties listed in Article 60.2 under c, e and f have the right to appeal decisions under Article 60.3 to CAS.¹⁸

60.5. If a party entitled to appeal lodges an appeal with CAS, all other parties entitled to appeal are explicitly entitled to lodge a cross-appeal or subsequent appeal. Any

¹⁷ The National Doping Regulations Appeals Committee is an independent appellate body established by Doping Authority Netherlands that makes decisions in both administrative appeals and appeals under the law of association (based on the national Doping Regulations) in the cases referred to in Article 60.3(b). The duties, structure and working method of the National Doping Regulations Appeals Committee have been set out in the Regulations for the National Doping Regulations Appeals Committee, with additional provisions being found in the Regulations on Compliance with Doping Sanctions. The aforementioned regulations constitute part of these regulations. Doping Authority Netherlands may decide to delegate the National Doping Regulations Appeals Committee's duties referred to in this provision to a disciplinary body of the federation.

¹⁸ The rules and conditions of CAS will apply in addition to these regulations to an appeal lodged with CAS.

party wishing to avail itself of this entitlement shall file the cross-appeal or subsequent appeal at the latest with the party's statement of defence.

- 60.6. All parties to any CAS appeal must ensure that WADA and all other parties with a right to appeal have been given timely notice of the appeal lodged with CAS.
- 60.7. An appeal against a decision to impose a provisional suspension may be lodged only by the person on whom the provisional suspension has been imposed.
- 60.8. A decision under Article 59.1.p may be appealed exclusively to CAS in accordance with Article 7.1.1 Code.
- 60.9. In making its decision, CAS shall not give deference to the discretion exercised by the body whose decision is being appealed.

Article 61 Appeals/WADA intervention

- 61.1. If WADA, in accordance with the provisions in Part XII, has the right to appeal against the decision and none of the parties referred to in Article 60.2 have appealed other than WADA, WADA may, without exhausting the other appeal options, lodge an appeal directly with CAS.
- 61.2. WADA may intervene in doping proceedings if the disciplinary body has not rendered a decision before a deadline determined by WADA. When no decision has been rendered before the aforesaid deadline elapses, this will be considered to be a decision by the competent hearing or appellate body that there has been no anti-doping rule violation. In that case, WADA may lodge an appeal directly with CAS. If CAS finds that (i) there has been an anti-doping rule violation in the case in question, and (ii) WADA's decision to lodge an appeal directly with CAS has been reasonable, Doping Authority Netherlands shall pay WADA's costs for the appeal to CAS, including at least the legal fees.

Article 62 Appeals relating to therapeutic use exemptions

- 62.1. A decision regarding an application for a therapeutic use exemption can be appealed by the athlete to the National Doping Regulations Appeals Committee. Part XII applies mutatis mutandis unless these regulations provide otherwise.
- 62.2. A decision by WADA to reverse a decision relating to a therapeutic use exemption is subject to appeal to CAS only. The person concerned, the relevant international federation and Doping Authority Netherlands have the right to appeal in such cases.
- 62.3. Any TUE decision by an international federation that is not reviewed by WADA or that is reviewed but not reversed by WADA can be lodged with CAS only. The person concerned and Doping Authority Netherlands have the right to appeal in these cases.
- 62.4. Therapeutic use exemptions revised by WADA at any time remain in force until the person concerned has been informed in writing of this decision by WADA.
- 62.5. If a decision relating to a properly submitted request for a therapeutic use exemption is not taken within a reasonable time, the request for a therapeutic use exemption will be considered to have been denied for the purposes of the application of Article 62 thus triggering the applicable rights of review/appeal.

Article 63 Filing deadlines for appeals

- 63.1. The filing deadline for an appeal is twenty-one days, starting on the day upon which the party with the right to appeal is informed in writing about the decision subject to appeal.
- 63.2. The filing deadline for an appeal or intervention by WADA will be the latest of the following:
 - a. twenty-one days after the last day on which any other party in the case could have appealed; or
 - b. twenty-one days after WADA's receipt of the complete file relating to the decision. WADA has fifteen days to request the complete file after receiving the decision subject to appeal.
- 63.3. The provisions of Article 63.2(b) relating to WADA will also apply to the filing deadline for an appeal that applies to Doping Authority Netherlands.

Part XIII Miscellaneous

Article 64 Duties and responsibilities of Doping Authority Netherlands

- 64.1. Doping Authority Netherlands is the Dutch NADO in the sense of these regulations and the World Anti-Doping Code.
- 64.2. Doping Authority Netherlands has the following duties, responsibilities and competences:
 - a. to plan, implement, evaluate and promote anti-doping education in line with the International Standard for Education;
 - b. the adoption of the appendices included in these regulations (with the exception of the prohibited list);
 - c. the detection, and investigation, of possible violations in the Netherlands and other countries, the organisation of the related hearings, persons and institutions, and the exchange of the related intelligence and information for that purpose with other ADOs;
 - d. the monitoring and supervision of the correct application of, and compliance with, these regulations and the World Anti-Doping Code, as well as, where necessary, correction and intervention in this respect (for example by making use of the right to appeal);
 - e. where appropriate, the provision of substantiating evidence;
 - f. managing and implementing the doping control process;
 - g. maintaining contacts with members and/or persons concerned, or their representatives specifically, but not exclusively, in the context of the application of Article 27 and Article 46;
 - h. where appropriate, initiating proceedings for possible violations;
 - i. participation in disciplinary proceedings relating to possible violations;
 - j. collaboration with the police, the judiciary, customs services, the national Health Care Inspectorate and other judicial institutions and bodies (such as the Department of Public Prosecutions and the Dutch Food and Consumer

- Product Safety Authority) relating to possible violations, as well as the exchange of information with these bodies about possible violations;
- k. the management of athlete biological passports, including planning and conducting sample collection for this purpose, arranging for sample analysis, the assessment and/or comparison of results (or making arrangements for this purpose), the appointment of a committee to assess the relevant data, and all other factors as determined in the guidelines for passports of this kind drafted by WADA;
 - l. the automatic investigation of (i) the athlete support personnel concerned in the case of an anti-doping rule violation by a protected person, and (ii) athlete support personnel working with several members who have committed an anti-doping rule violation;
 - m. cooperating in full with investigations initiated by WADA into (i) anti-doping rule violations and (ii) activities that may facilitate doping;
 - n. supervising the correct application and/or enforcement of consequences imposed for a violation of these regulations;
 - o. handling cases involving complete or partial non-compliance with a sanction imposed on a person concerned for a violation of these regulations;
 - p. all other duties, responsibilities and competences assigned in the World Anti-Doping Code and/or the International Standards to Doping Authority Netherlands in its capacity as an ADO; and
 - q. all other work and duties that contribute to anti-doping in sport.
- 64.3. Doping Authority Netherlands is vested with the authority required for the effective and efficient implementation and fulfilment of the duties and responsibilities referred to in this Article.

Article 65 Duties and responsibilities of members

Notwithstanding the provisions in the other Parts of these regulations, each member has the following duties and responsibilities:

- a. to comply with the doping regulations and other doping rules, including legislation;
- b. being available at all times for a doping control;
- c. preventing a prohibited substance or prohibited method from entering his or her body;
- d. ensuring that he or she does not commit an anti-doping rule violation;
- e. informing athlete support personnel, and at least the medical personnel, about (i) the obligation incumbent on members not to use or undergo the administration of any prohibited substances or prohibited methods, and (ii) the responsibility of the athlete support personnel to ensure that no prohibited substances and/or prohibited methods enter the body of a member whom they support, treat and/or with whom they work;
- f. informing Doping Authority Netherlands and the international federation about each decision or judgment of any organisation or body not subject to the World Anti-Doping Code to the effect that he or she has committed an anti-doping rule violation in the past ten years; and
- g. cooperating with investigations initiated by ADOs into (i) anti-doping rule violations and (ii) activities that may facilitate doping.

Article 66 Duties and responsibilities of athlete support personnel

Notwithstanding the provisions in the other Parts of these regulations, athlete support personnel have the following duties and responsibilities:

- a. cooperating with doping controls of members;

- b. fostering anti-doping attitudes among members;
- c. preventing the entry of a prohibited substance or prohibited method into the body of a member supported by the athlete support personnel and/or with whom the athlete support personnel work;
- d. informing Doping Authority Netherlands and the international federation about each decision or judgment of any organisation or body not subject to the World Anti-Doping Code to the effect that he or she has committed an anti-doping rule violation in the past ten years;
- e. cooperating with investigations initiated by ADOs into (i) anti-doping rule violations and (ii) activities that may facilitate doping;
- f. to be familiar with and comply with any regulations and/or doping regulations applicable to the member or members supporting the athlete support personnel;
- g. cooperation with the application of, and compliance with, these regulations; and
- h. cooperation with the execution of the duties and responsibilities of Doping Authority Netherlands as referred to in Article 64.

Article 67 Duties and responsibilities of the federation

Notwithstanding the provisions in the other Parts of these regulations, the federation has the following duties and responsibilities:

- a. cooperating with doping controls of members;
- b. cooperating with investigations initiated by ADOs into (i) anti-doping rule violations and (ii) activities that may facilitate doping;
- c. reporting directly to Doping Authority Netherlands and the international federation all information that may indicate or be related to an anti-doping rule violation;
- d. cooperation with the application of, and compliance with, these regulations; and
- e. cooperation with the execution of the duties and responsibilities of Doping Authority Netherlands as referred to in Article 64.

Article 68 Data privacy

- 68.1. Picture or sound recordings of the doping control, as well as the showing, display or publication of picture and/or sound recordings of the doping control, are permitted only with the permission of the person concerned and the testing agency.
- 68.2. The personal details of the person concerned, including his or her whereabouts information, information about therapeutic use exemptions and control results, may be sent to the federation, the testing agency, the laboratory and the relevant ADOs, including at least to Doping Authority Netherlands, the international federations and WADA.
- 68.3. Doping Authority Netherlands may distribute information about control results and/or possible violations in accordance with the relevant provisions in these regulations, the World Anti-Doping Code and/or one or more International Standards.

Article 69 Costs

- 69.1. In so far as the conducting of the analysis is concerned, the person concerned will meet the costs of the analysis of the B sample referred to in Article 23 unless:

- a. the analysis of the sample takes place at the request of Doping Authority Netherlands, in which case the aforementioned costs will be for the account of Doping Authority Netherlands regardless of the result of the analysis; or
 - b. the result of the analysis of the B sample does not confirm the result from the A sample, in which case the aforementioned costs will be for the account of Doping Authority Netherlands.
- 69.2. The other costs incurred by the person concerned with respect to the analysis of the B sample, such as attendance at the laboratory by the person concerned himself or herself and/or the person he or she designates, will be for the account of the person concerned.
- 69.3. The defence costs incurred by the person concerned in respect of a possible violation will be for his or her own account unless a disciplinary body, arbitration body or court decides otherwise.

Article 70 Legal status of regulations

- 70.1. These doping regulations have been drafted as independently applicable regulations in so far as is possible. Consequently, other federation regulations, rules and/or federation decisions will apply only in so far as they supplement these doping regulations and do not conflict with them. In the case of conflict between a federation's regulations and these regulations, these regulations will prevail.
- 70.2. The application of these regulations will not be limited by other regulations of the federation. Consequently, the disciplinary arrangements of the federation will apply to the provisions of these doping regulations only in so far as the disciplinary arrangements do not conflict with the content and/or the purport of these regulations.

Article 71 Interpretation

- 71.1. In relevant cases, the interpretation of these regulations will be based on the English text of the prevailing World Anti-Doping Code and/or International Standards at the time of the doping control or, if there has been no doping control, the time of the anti-doping rule violation (whether alleged or proven).
- 71.2. The World Anti-Doping Code must be interpreted as an independent and autonomous text and not by reference to laws or statutes unless stated expressly by these regulations.
- 71.3. The headings used for the various Articles of these regulations are for convenience only, they are not part of the substance of the regulations and they do not affect in any way the interpretation of the provisions to which they refer.
- 71.4. These regulations have been drafted in accordance with the applicable provisions in the World Anti-Doping Code and associated International Standards and they shall be interpreted in a way that is compatible with these provisions of the World Anti-Doping Code and International Standards.
- 71.5. The explanatory notes to the provisions of the World Anti-Doping Code constitute part of this Code, and shall be used in interpreting these regulations. The same applies to any explanatory notes drafted by Doping Authority Netherlands accompanying these regulations, if explanatory notes of that kind are available.

- 71.6. All time limits applicable to results management will start on the first day after the person concerned, the federation and/or Doping Authority Netherlands has received the written notification or information referred to above.
- 71.7. The date of reception in the case of written correspondence will be considered to be five working days after the date upon which it is sent. In the case of correspondence sent by electronic means only, the date of receipt will be considered to be one day after the date of transmission.
- 71.8. The purpose, scope and organisation of the World Anti-Doping Program and the appendix accompanying the World Anti-Doping Code (on definitions (Appendix 1)) is an integral part of the World Anti-Doping Code.
- 71.9. The World Anti-Doping Code shall be used for the interpretation of these regulations. In the event of any conflict between these regulations and the World Anti-Doping Code and/or International Standards, the World Anti-Doping Code and/or International Standard(s), as applicable, will prevail.
- 71.10. The violations referred to in Part II may be committed by any member with the exception of the following:
- a. violations of Article 3 (presence), Article 4 (use), Article 5 (evasion) and Article 6 (whereabouts failures). These can be committed only (i) by members covered by the definitions of International-Level Athlete, National-Level Athlete or recreational athlete, (ii) d/members that perform at National-Level B, and/or (iii) by members who, whether or not in competition, engage actively in sports, plan to do so and/or are preparing to do so;
 - b. violations of Article 8 (possession). These can be committed only by the members referred to in Article 71.10(a) and/or members covered by the definition of athlete support personnel (Article 1.7).
- 71.11. Where the term "days" is used in these regulations, the Code or an International Standard, it shall mean calendar days unless otherwise specified.

Article 72 Transitional provisions

- 72.1. Article 50 and Article 55 are procedural provisions that may be applied retroactively.
- 72.2. Each possible violation:
- a. for which proceedings have already been initiated on the effective date of the World Anti-Doping Code 2021¹⁹; or
 - b. for which proceedings are initiated after the effective date of the World Anti-Doping Code 2021 in respect of an anti-doping rule violation which has taken place before that date,
- is covered by the substantive doping regulations applicable at the time of the suspected anti-doping rule violation in question and not by the substantive doping regulations of the World Anti-Doping Code 2021, unless the disciplinary body hearing the case (or Doping Authority Netherlands in the case of a possible settlement) determines that, in the circumstances of the case, the principle of Lex Mitior applies.
- 72.3. For the purposes of Article 72.2, Articles 50.9 and 55 are procedural rules, not substantive rules, that shall be applied retroactively at the same time as all the

¹⁹ The effective date of the World Anti-Doping Code 2021 is 1 January 2021.

other procedural rules of the World Anti-Doping Code 2021 (it being understood that Article 55 will be applied retroactively only if the statute of limitations in the transitional provision has not yet expired on the effective date of the World Anti-Doping Code 2021).

- 72.4. With respect to cases where a final decision finding an anti-doping rule violation has been rendered prior to the effective date, but the Athlete or other Person is still serving the period of Ineligibility, the Athlete or other Person may apply to Doping Authority Netherlands to consider a reduction in the period of Ineligibility in light of the 2021 Code. Such application must be made before the period of Ineligibility has expired. The 2021 Code shall have no application to any anti-doping rule violation case where a final decision finding an anti-doping rule violation has been rendered and the period of Ineligibility has expired. Applications based on Article 72 shall be reviewed in conformity with the Regulations on Transitional Provisions World Anti-Doping Code 2021.
- 72.5. For the determination of the period of ineligibility for a second anti-doping rule violation on the basis of Article 50, in which the sanction for the first anti-doping rule violation has been determined on the basis of the doping regulations prevailing prior to the World Anti-Doping Code 2021 becoming effective, the period of ineligibility to be imposed for the aforesaid first anti-doping rule violation shall be the period that would have been imposed if the World Anti-Doping Code 2021 (and the National Doping Regulations based on that code) had applied.
- 72.6. Changes to the Prohibited List and Technical Documents relating to substances or methods on the prohibited list shall not be applied retroactively, unless expressly stated otherwise in the prohibited list or the Technical Document concerned.

Article 73 Appendices & rules

- 73.1. The appendices and rules mentioned in these regulations constitute an integral part of these regulations.
- 73.2. With the exception of the Prohibited List, the appendices and rules accompanying these regulations and which are part of these regulations will be adopted by Doping Authority Netherlands.
- 73.3. The appendices and rules referred to in the previous paragraph will come into effect when they are published on the website of Doping Authority Netherlands: www.dopingautoriteit.nl. The Prohibited List will come into effect on a date to be determined by WADA.

Article 74 Final provision

In cases not provided for by these regulations, Doping Authority Netherlands will decide. In such cases, Doping Authority Netherlands will consult the federation before making a decision.

ANNEX 2 – PROGRAMME AND LIST OF PARTICIPANTS IN THE EVALUATION VISIT IN THE HAGUE, 13-15 SEPTEMBER 2021



Ministry of Health, Welfare and Sport

DG Public Health
Directorate Sport

Address for visitors:

Parnassusplein 5
2511 VX Den Haag
T 070 340 79 11
F 070 340 78 34
PO Box 20350
NL-2500 EJ The Hague
www.rijksoverheid.nl

Information

H.R. van Mastrigt
Beleidsmedewerker
M +31 6-11797027
hr.v.mastrigt@minvws.nl

Date

9 September 2021

Aantal pagina's

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Programme T-DO Monitoring Visit Netherlands

Sunday 12th of September – arrival

Arrival of experts to The Hague through Amsterdam Schiphol Airport or Rotterdam Central Station. Experts are expected to transfer to The Hague on their own.
Hotel – Mercure Hotel, Spui 180, 2511 BW Den Haag

Monday 13th of September

- 9:00 Arrival at the Ministry of Health, Welfare and Sport *Parnassusplein 5, 2511 VX Den Haag*
- 9:30-10:00 Meeting with Director-General of Public Health, Mr Charles Wijnker
- 10:00-10:30 Meeting with the deputy Secretary-General, Ms Abigail Norville,
- 10:30-11:00 Coffee break *Walking to the meeting venue Mercure Hotel, Spui 180, 2511 BW Den Haag*
- 11:00-12:00 Meeting with the director Sport, Ms Annelies Pleyte
- 12:00-13:00 Lunch break *We will be joined by Mr Vincent Egbers President of Doping Authority Netherlands*
- 13:00-14:30 Meeting with public agencies that also encounter doping
- *Ms Marjolein Verwiël, prosecutor, Public Prosecution Service*
 - *Mr Timon van de Kraats, Public Prosecution Service*
 - *Mr Hans Heuvelmans, The Health and Youth Care Inspectorate*
 - *Ms Leontine Sitee, Ministry of Justice and Security*
- 14:30-15:30 Meeting with Mr Henk van Aller to introduce the Institute for Sports Law
- 18:30 Dinner *De Basiliek, Korte Houtstraat 4-A, 2511 CD The Hague*

Tuesday 14th of September

8:30-9:30 Transfer to the office of Doping Authority Netherlands *taxi pick up at the Mercure Hotel transfer to Barbizonlaan 55 2908 ME Capelle aan den IJssel*

9:30-10:00 Meeting with the President of Doping Authority Netherlands, Mr Vincent Egbers

10:00-12:30 Meeting with department heads of Doping Authority Netherlands *discussion on education, legal affairs and doping controls/investigations*

- *Mr Erik Duiven, head of Education*
- *Mr Steven Teitler, head of Legal Affairs*
- *Mr Koen Terlouw, head of Enforcement & Investigations*

12:30-14:00 Lunch break

NH Hotel, Barbizonlaan 2, 2908 MA Capelle aan den IJssel

14.00-15.30 Meeting with Anti-Doping Knowledge Center and TUE committee and potential overflow of morning programme

15:30-16:30 Meeting with Sport representatives

- *Ms Anneke van Zanen, Chair of the Netherlands Olympic Committee-Netherlands Sport Federation NOC*NSF*
- *Mr Erik Lenselink, Manager Corporate Affairs, Sport Federation NOC*NSF*
- *Dion Beukeboom, NOC*NSF Athlete Commission*
- *Jitse Talsma, Adviser Integrity & Governance, NOC*NSF*

16:50 Pick up for transfer to Mercure Hotel, the Hague

Wednesday 15th of September

9:30-11:00 Meeting with the Ministry and NADO about the initial conclusions of the visit; timeline and other procedural matters / *Lobby or terrace of Mercure Hotel*

11:00-12:00 Team meeting / Lobby or terrace of Mercure

12:30 Lunch and departures

Practical information, current Covid-19 measures in the Netherlands:

- *Wash your hands thoroughly and regularly*
- *Keep 1.5 metres distance*
- *Mouth and nose must be covered at airports and in public transport*

ANNEX 3 – COMPOSITION OF THE EVALUATION TEAM

Evaluation visit on compliance with commitments – Anti-Doping Convention
The Hague, Netherlands, 13-15 September 2021

EVALUATION TEAM

Head of the team

Ms Shafag HUSEYNLI
Director, Azerbaijan National Anti-Doping Agency (AMADA)
Member of the T-DO Coordination Group
AZERBAIJAN

Rapporteur

Mr Graham ARTHUR
Consultant
UNITED KINGDOM

Members of the team

Mme Floriane CAVEL
Senior Lawyer, Agence française de lutte contre le dopage
FRANCE

Hubert Dziudzik
Deputy Director, Polish Anti-Doping Agency
POLAND

Kaarel NESTOR
Adviser, Sports Department,
ESTONIA

Council of Europe

Ms Sophie KWASNY
Head of Sport Conventions Division
Directorate General of Democracy

Ms Liene KOZLOVSKA
Sport Conventions Division
Anti-Doping Convention Senior Programme Manager

ANNEX 4 – COMMENTS BY THE DUTCH AUTHORITIES TO THE EVALUATION REPORT



Ministerie van Volksgezondheid,
Welzijn en Sport

> Return adress PO Box 20350 NL-2500 EJ The Hague

Ms Shafag Huseynli, Head of the Evaluation Team
Mr Graham Arthur, Rapporteur
Ms Sophie Kwasny, Head of Sports Conventions

Via e-mail:

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Visiting address

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T +31 70 340 79 11
F +31 70 340 78 34
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For information

B.H. van Houten
Sr Policy adviser
T +31 6 1158 5027

Date 22-12- 2021
Concerns Brief Monitoring Report Doping RvE

Reference

3299750-1022177-S

Dear Evaluation Team, dear Ms Huseynli and dear Mr Arthur,
Dear Secretariat, dear Ms Kwasny,

Attachment(s)

-

Thank you very much for the draft evaluation report, dated 9 December 2021, of the monitoring visit to the Netherlands in September 2021. We look back on a positive and constructive visit of the Evaluation Team to the Netherlands. We are satisfied that the report properly represents the measures taken in the Netherlands for the implementation of the Anti-Doping Convention of the Council of Europe. We would like to take this opportunity for a brief written reply, before adoption of the Evaluation Report by the Monitoring Group in written procedure.

Correspondentie uitsluitend richten aan het retouradres met vermelding van de datum en het kenmerk van deze brief.

We would like to note that this monitoring visit was timed to coincide and create synergy with a general evaluation that we are planning for our anti-doping policy and our Anti-Doping Policy Implementation Act in the first half of 2022. The outcomes of this monitoring visit are intended to also feed into, and have already proven very helpful in directing that evaluation.

Firstly, we have a minor point of clarification. On p.10 of the draft report, with regard to the financing of doping controls it is mentioned "the current funding commitment from NOC*NSF is in place until 2023". To clarify, the funding commitment is in place for 2022 and 2023, i.e. for the two years to come.

Secondly, with regard to the recommendations, we would like to thank the Evaluation Team for the recommendations they have made. They can be grouped around six subjects: on the coverage of the prohibited list, on information sharing between our NADO and law enforcement agencies, on the role of our NOC, on testing jurisdiction of our NADO (concerning risk management in the current situation and possible improvements for a future situation), the status of our national doping rules, and the structure around parties involved in ADRV-proceedings.

With regard to the recommendation on the coverage under the Medicines Act and the Commodities Act of the substances on the Prohibited List, we will be asking the Healthcare Inspectorate to make an analysis to this end.

With regard to the recommendation on information sharing between our NADO and law enforcement agencies, this is something that the Government would like to maximize within the existing legal framework. This subject is already to be included in the upcoming evaluation.

The Evaluation Team requests to inform the Monitoring Group of the outcomes of the evaluation on this point; we will be happy to do so and expect to be able to after next summer.

As regards the role of our National Olympic Committee, specifically as it concerns test distribution, the Evaluation Team raises a very good point, that we intend to include in the upcoming evaluation as well. And with regard to the structure and position of parties in ADRV-proceedings, the Evaluation Team notes that while the current structure is not inconsistent with the Convention, it is not ideal and therefore recommends that it be reviewed. This is another valid point, and this subject too will be a part of the upcoming policy evaluation.

Reference
3299750-1022177-S

Furthermore, as regards testing jurisdiction the Evaluation Team notes that there is an inherent risk in our current system that requires national federations to adopt anti-doping rules to provide the NADO with jurisdiction to test. The Team recommends this risk be taken into account in the risk-management strategy for testing jurisdiction, which is something the Netherlands is happy to take on board. Additionally, the Evaluation Team recommends to expand testing jurisdiction for Doping Authority Netherlands so it automatically applies to any athlete present in the Netherlands. This is something that the government is less enthusiastic about, as it would require a legislative intervention in a system that is strongly privately oriented. Nevertheless, we would like to use the upcoming policy evaluation to get more input on the necessity of the recommended expansion.

The before last recommendation, concerning the status of our National Doping Rules, is connected to this point. The Evaluation Team recommends that for the National Doping Rules we replace the current adoption model with the single instrument model, which means turning the National Doping Rules into legislation. We do not consider legislation to be a necessary instrument in implementing this Convention, but rather a policy decision. The Netherlands considers doping rules an instrument in protecting clean competition, and is of the opinion that they should apply to all those who chose to subject to them. A legislative character, which applies to all regardless, does not sit well with that. However, we take the recommendation seriously, to the extent that we will be including a question as to the necessity of legislation in the upcoming evaluation.

Finally, we would like to once again reiterate our thanks to the Team for their efforts and their insights. And we look forward to continue to work together in the follow-up to this report.

Best regards

The Director of the Sports department,

A.C. Pleyte

