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COMMITTEE ON CULTURE, SCIENCE, EDUCATION AND MEDIA

Contributions to the hearings held on 12 March 2015 during the meeting held in The Hague, the Netherland

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1. INCREASING CO-OPERATION AGAINST CYBERTERRORISM AND OTHER LARGE-SCALE ATTACKS ON THE INTERNET

1.1. Contribution by Ms Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe

First let me thank the PACE Committee on Culture, Science, Education and Media for looking at the problem of cyberterrorism and other large-scale attacks against critical information infrastructure.

Over the last two years we have seen a very worrying increase in cyberattacks. As technology evolves, law enforcement agencies frequently find themselves playing catch-up. Victims often have low expectations of the justice they'll receive. And these crimes don't just undermine the Rule of Law, they undermine our democratic freedoms too. The European Court of Human Rights has affirmed – in the case of Yildirim v Turkey in 2013 - that the Internet has become the principal means of freedom of information, which applies not only to the content of information but also to the means of its dissemination. Attacks which shut down computers or distort content are a direct affront to freedom of information, just as hacking into personal data harms the right to privacy too.

We need to stop talking about cyberspace as if it is somehow different from the real world. Internet and social networks are public spaces – like streets, parks, theatres or shopping malls. The same Human Rights – and responsibilities - should apply there and the Rule of Law must be upheld.

In order to do this, criminal justice authorities need additional tools, and my strong view is that international cooperation is key. The internet is borderless and States will be far more effective at catching cyber criminals and terrorists if they are operating under the same legal framework.

However, you'll know that such solutions can be notoriously difficult to negotiate. A big part of the problem is confusion, in the political debate, between covert surveillance by national security services on the one hand, and measures used in criminal investigations – also known as special investigation techniques – on the other. Criminal investigations require access to specified data for specific cases. Bulk interception of data for national security purposes is a very different story, and there are serious concerns regarding democratic oversight of this activity. I call on PACE to make this distinction. We need more effective criminal justice; we need stronger safeguards when it comes to surveillance by the security services. What we don't need is ongoing confusion between the two.

Given the difficulties around negotiating new international solutions, we should also make sure we are making the best possible use of the legal instruments and other tools which already exist. These include in particular the Council of Europe's Conventions on the Prevention of Terrorism (ETS 196) and on Cybercrime (ETS 185). Together, they provide a comprehensive international response to the terrorist use of the Internet. I trust that PACE will agree that these instruments represent a unique acquis of the Council of Europe. The Budapest Convention in particular has a worldwide vocation.

I know that there are a number of specific issues under consideration by the Committee on Culture, Science, Education and Media, so I'd like to take those in turn.

Let me clarify first that the Budapest Convention does cover Distributed Denial of Service and other types of large-scale attacks against computer systems. This was clearly demonstrated by the Cybercrime Convention Committee (T-CY) in its Guidance Notes on "botnets", "DDoS attacks", and "critical information infrastructure attacks" in 2013. In these Guidance Notes, the Committee encourages Parties to consider aggravating circumstances as well as the impact of attacks when establishing sanctions and measures. In 2015/2016 they will assess how Parties implement Article 13 of the Budapest Convention on sanctions and measures.
You are rightly concerned about the effectiveness of mutual legal assistance when it comes to cybercrime and electronic evidence. Indeed, it is essential that national procedures are streamlined so that replies to requests are provided more efficiently. I would like to draw your attention to a set of recommendations adopted by the Cybercrime Convention Committee in December 2014. Most of them can be addressed at the domestic level, for example by allocating more resources and better trained staff responsible for judicial cooperation. Some of these recommendations would require a new Protocol to the Budapest Convention. For example: a light, perhaps even automated regime for requests for subscriber information; or the possibility of international production orders for electronic evidence.

Sometimes mutual legal assistance isn't possible, such as when the origin of an attack or the location of data are not known to criminal justice authorities. The Cybercrime Convention Committee has therefore looked for three years into the question of transborder access to data. In December 2014, the Committee issued a

Guidance Note to provide more clarity on the existing provision of the Budapest Convention, namely Article 32. At the same time, going further, for example by developing a Protocol to the Budapest Convention on transborder access to data, has proven difficult in the context of reports on mass surveillance by national security services. However, the Committee decided that giving up on the rule of law in cyberspace is not an option. A new working group, the Cloud Evidence Group, has now been established to identify solutions for criminal justice access to data on cloud servers. The results of this Group would also feed into a Protocol to the Budapest Convention. We need the political support of PACE when it comes to the negotiation of a Protocol.

The sharing of information between public bodies and private firms also needs to be improved. This includes the sharing of threat and incident data, which is crucial to prevent, mitigate and control large-scale attacks on ICT and cybercrime. However, this will be difficult so long as the data protection frameworks at the level of the European Union and the Council of Europe are not completed. PACE should therefore take a strong stance and support completion of these frameworks.

Our states have also signed up to a framework of inter-state cooperation to protect and promote the universality and integrity of the Internet. This framework extends to information sharing, consultation and mutual assistance in identifying and responding to disruptions to, and interferences with, the infrastructure of the Internet. PACE delegations are encouraged to promote this framework at domestic levels.

Finally, a word on capacity building, which is a major component of the Council of Europe's approach to cybercrime. A Cybercrime Programme Office of the Council of Europe (C-PROC) was established in Romania and became operational in April 2014. The sole purpose of this office is to support capacity building programmes. Since then, more than 60 activities were implemented not only in Europe but also in Africa, Asia/Pacific, the Caribbean and Latin America. Support covered the strengthening of legislation, but also the training of law enforcement, prosecutors and judges, the establishment of high-tech crime units and many other measures. Should resources become available, specific programmes on large scale attacks could also be launched.

Overall, it would seem that the concerns raised by the PACE Committee on Culture, Science, Education and Media are similar to the concerns of the Cybercrime Convention Committee. And as you can see, your concerns are being addressed within the framework of the Budapest Convention and its Committee. The work ahead, in particular the negotiation of an additional Protocol will not be an easy task. Strong political support by PACE will be needed if we want to achieve a breakthrough and strengthen the rule of law in cyberspace.

2. RETHINKING THE ANTI-DOPING STRATEGY

2.1. Contribution by Professor Michel Rieu, former scientific counsellor to the French Anti-doping Agency (AFLD)

ANTI-DOPING: A PUBLIC HEALTH ISSUE

It is advisable at the outset to distinguish between the concept of "doping behaviour" – that is substance consumption to face or overcome an obstacle, whether real or perceived by the user or by those around him, with an aim of performance – and the definition of doping in sport, which corresponds to infringement of the rules set forth in the World Anti-Doping Code. To sum up, this infringement occurs in cases where, notably, there is proof of:

- presence of a prohibited substance, its metabolites or markers in an athlete's sample;
- use or attempted use by an athlete of a prohibited substance or a prohibited method;
- tampering or attempted tampering with any part of doping control.

The doping phenomenon and the resultant hazards

Action to combat doping sets out to guard against two major hazards: cheating and damage to athletes' health. This action is indeed a public health concern[1], as doping relies on methods or substances which are potentially hazardous to the health of athletes.

Let us remember that doping has three aims which weigh differently according to sports discipline:

[1] See QUENEAU Patrice and RIEU Michel: *La lutte contre le dopage: un enjeu de santé publique*; report of the National Medical Academy, 2012.

1. increasing mental capacities (alertness and attention, resistance to stress, motivation and aggressiveness) and raising the bearable training workload by cancelling out the symptoms of fatigue;
2. increasing aerobic capacities (transport of oxygen in the blood and its utilisation by the skeletal muscle fibre);
3. increasing muscular mass, hence strength.

As regards stimulation of mental capacities and cancelling out symptoms of fatigue, the doping substances typically used are: stimulants (particularly amphetamine derivatives), narcotics (morphine derivatives, cocaine, cannabis) and glucocorticoids. Use of these substances carries the following risks in particular:

- in the short term, exceeding bodily limits can lead to exhaustion, heat stroke, possibly death above all in adverse climatic conditions;
- in the medium and long term, dependence, psychiatric decompensation, outbreak of cardiovascular illnesses (for example, amphetamines can bring about arterial hypertension and valvular heart disease, and cocaine can cause cardiomyopathy);
- regular and protracted use of glucocorticoids can provoke weakening of the muscle-tendon system, immunodeficiency, arterial hypertension and adrenocortical insufficiency.

As regards raising capacities for conveyance of oxygen via the blood and for its use, apart from blood transfusion and particularly self-administered transfusion, mention can be made of using: erythropoietin Rh, biosimilars and mimetic peptides; diaspirin crosslinked haemoglobin; allosteric haemoglobin modifiers; metabolic modulators (GW1516, AICAR, etc.). These methods cause risks of thromboembolic events, intolerance syndromes, transfusion mishaps, transmission of infectious agents, and other dangers.

As regards increasing muscular mass and accelerating the metabolism of skeletal muscle fibre, use is made especially of anabolic steroids (A.S.), beta2-agonists (clenbuterol) and growth hormone (GH). These substances generally carry cardiovascular risks (cardiomegaly, coronary disease, arterial hypertension, irregular heartbeat) and threat of cancer (colon, prostate, liver, testicles). Anabolic steroids may bring about dependence, aggression, sexual disorders (testicular failure and gynecomastia in men, clitoromegaly and alteration of the morphotype in women). Growth hormone is responsible for modifications of morphology (hypertrophy of the jaws and the extremities), metabolism (insulin resistance, lipid disturbances) and endocrine glands (hypothyroidism).

I would mention a phenomenon which tends to go unnoticed: “non-traumatic sudden death”. About 800 deaths per year are recorded (2.2 per day) on sports grounds. 95% of the victims are men without any history of cardiovascular disorder. The average age is 46 years. For want of probing investigations and systematic autopsy, 78% of these accidents remain of undetermined origin in the population studied[2].

Doping in high performance sport

The doping phenomenon primarily concerns the world of top athletes.

In France in 2013, out of 9 070 urine samples analysed 40% related to the 19 000 athletes classed as top level and hopefuls. 1.9% of the samples showed abnormal analysis results. The substances most frequently implicated were glucocorticoids (32.5% of cases), anabolising drugs (21.8%), stimulants (13.6%), and cannabis (12.8%). As regards the “infringement ratio” (that is the number of infringements in a given sport to the number of controls performed in that sport), the most affected sector would be weight lifting and body building (14.8%), followed by cycling (12.8%), athletics (10.7%), rugby (8.1%) and soccer (4.7%).

Nonetheless these results certainly do not reflect the reality of doping. Indeed, action against doping meets numerous difficulties.

First there are scientific obstacles:

- Difficulty in distinguishing the endogenous or exogenous origin of hormonal substances.
- The fact that the window of detection may be relatively brief depending on the dose and the speed at which the substance used is metabolised.

[2] On this subject, see:

- MARIJON E., TAFFET M., CELESMAJER D.-S., DUMAS F., PERRIER M.-C., MUSTAFIC H., TOUSSAINT J.-F., DESNOS M., RIEU M., BENAMEUR N., LE HEUZET J.-Y., EMPANA J-P., JOUVEN X.: *Sports-Related Sudden Death in the General Population*. *Circulation*, 2011; 124(6); pp. 672-681.
- QUENEAU P., RIEU M., LECOMTE D., GOULLÉ J.-P., PROBST V., JOUVEN X. and VACHERON A.: *Mort subite au cours des activités physiques et sportives. Recommandations pour des mesures préventives;* report of the National Medical Academy, 2013.

- Use of currently undetectable methods or substances (as in the case of self-administered transfusions).
- Inadequate knowledge of the (potential) doping substances about to be put on the market, for example the new pharmacology capable of interfering with the channels whereby gene expression is manifested or with the activity of the sensory neurons. It must be understood that in this field, "one does not find what one seeks".
- Finally, the sophistication of the doping protocols, perfected by past masters.

A second series of obstacles is regulatory, consisting in:
- The fact that that the list of prohibited substances distinguishes between prohibition "in" and "out of competition"; which in practice facilitates doping during periods of training and preparation for competitions, provided that the doping treatment is halted in time for it to be no longer detectable during the competition.
- Urine "detection thresholds" whose relevance raises questions.
- "Therapeutic Use Exemptions" (TUE), which may be misused in practice.
- The ambiguous role of the international Federations de facto enjoying a status of extraterritoriality.

Doping in the world of amateur and recreational athletes

Doping concerns not only the small population of top level athletes but also – and I am only speaking of France – 16 million participants including 7 million minors. Combating doping is a major public health concern having regard to this population.

As to the extent of the doping phenomenon among minors, the results of most studies[3] converge: among girls, the percentage who use or have used doping substances is approximately 1.5% (0.6-2.8% depending on the studies); among boys the percentage is 3.7% (2.6-5.1%). Consumption may begin very young (between 9 and 13 years) and increases with age. At school, 4% of young athletes have experienced the temptation of doping.

In Belgium, according to the 2010 annual report of the "Cellule Multidisciplinaire Hormone", almost 8% of young people aged 14 to 18 years have recourse to growth hormone.

At the request of the Council for preventing and combating doping (CPLD), the University of Reims conducted a study in schools in 2004 (Union nationale du sport scolaire – UNSS). On the basis of the replies given by 6 402 adolescents (average age 16), the study shows that:
- 4% of these young people had been confronted with doping;
- 2% were already users of a prohibited substance;
- the "inciters" were often parents, doctors and educators;
- for 21% of the children, it was impossible to become a top level athlete without doping.

I stress the seriousness of this situation regarding young people who are urged on by adults close to them to adopt doping behaviour by using medicines in their sports activity and consequently become convinced that it is not possible to achieve well in sport without a pharmaceutical aid.

Where doping among adults is concerned, its prevalence is thought to range between 5% and 15%. It may be higher among young males (20-25 years) in competition, particularly top level[4]. Another study[5] showed that in the European countries in the body building population, 22% of the men and 7% of the women had recourse to substances for "improving" performance.

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[3] See for example:
- REVUE TOXIBASE: *Le dopage chez les jeunes;* no. 10, June 2003.
- LAURE P., LECERF T., FRISER A., BINSINGER C.: *Drugs, recreational drug use and attitudes towards doping of high school athletes*. Int. J. Sports Med. 2004; 25(2):133-138.
- LAURE P., BINSINGER C.: *Doping prevalence among preadolescent athletes: a 4-year follow-up*; Br J. Sports Med. 2007 41, pp. 660-663.
- LEVY Joseph and THOER Christine: *Usage des médicaments à des fins non médicales chez les jeunes adolescents et les jeunes adultes: perspectives empiriques*. Drogues santé et société 2008 vol. 7 n°1, pp. 153-189.

[4] See:
- AEBERHARD P. and BRECHAT P-E*.: Activités physiques et sportives, santé publique, prévention des conduites dopantes: Chap. III: Epidémiologie, sport dopage conduites addictives et santé;* pp. 71-98 Ed. UNSP Rennes 2003.
- LAURE P*.: Epidemiologic approach of doping in sport. A review.* J. Sports Med. Phys. Fitness. 1997; 37(3); pp. 218-224.

[5] REDING V.: *Dopingbekämpfung in Kommerziell geführten Fitnessstudios*; Report of the European Union Commission "Sport ensemble"; Brussels, 20 March 2002.

AFLD preventive actions

Anxious to ensure protection of athletes' health, the Agence française de lutte contre le doping (AFLD) has conducted an operation to raise awareness of doping behaviour which targeted mass sports competitions. Conducted for the first time during the 2005 version of the Paris Marathon, the operation was subsequently performed on over 2000 athletes who had voluntarily agreed to participate in the action.

This awareness-raising action pursues three goals:
- Assessing the prevalence of the use of certain prohibited substances in mass competitions;
- Alerting and informing athletes as to the hazards connected with consumption of doping substances;
- Establishing a link with the sports world on the ground (collaboration with competition organisers and sports associations).

The procedure used is as follows:
- Supervised questioning of the athletes taking part in the operation to pinpoint certain tendencies with regard to consumption of prohibited substances and dietary supplements and knowledge of anti-doping rules.
- A urine screening test[6] to detect prohibited substances (cannabis, amphetamines, methamphetamines, cocaine, morphine-like opiates).

Out of the 2 021 athletes undergoing a test during the ten competitions on which the AFLD conducted the operation, 4.9% of the samples contained at least one of the substances tested, that is 99 positive samples and 107 substances detected. Concerning opiate positivity, in 33 out of 42 cases the athletes admitted codeine consumption (which renders the test for opiates positive). Therefore only 9 opiate positive samples are accepted. After this correction, 3.3% of samples positive for one or more tested substances are obtained.

These results no doubt fall far short of the reality. In fact the approach presents various biases:
- the method of selecting the athletes is based on volunteering;
- lack of confidentiality of the interviews: overcrowding in the tent;
- numerous substances are not detected by the method (anabolic drugs, EPO …)
- the sensitivity of the strip test is poor compared to the tests run in the doping detection laboratories accredited by WADA.

It is also worthwhile to emphasise some results of the questioning:
- About 28% of the athletes questioned take medicines on medical prescription including doping substances in some cases, but the use of these medicines is generally consistent with pharmaceutical indications.
- Nearly 45% of all competitors consume dietary supplements, essentially in order to improve their performance. Nearly 20% declare their purchase via the Internet.
- Prohibited substances and procedures are known to less than 40% of the population questioned, whereas 80% declare that they know of the anti-doping agencies.
- About 60% of the athletes questioned declared that they had undergone the test out of interest in prevention and to take part in combating doping.

Validity of the anti-doping drive

Some ask, "Should doping be made lawful, placing it under medical control?" Proponents of this liberalisation under surveillance put forward these arguments:
- failure of prohibition in the USA in the 1930s;
- the drug-assisted context in which our present-day societies live;
- the economic cost of combating doping in the face of disappointing results.

Nonetheless, to me this position is unacceptable in public health terms. If doping becomes lawful and appears indispensable in order to progress in sport, children will follow the example of their role models magnified by the media and adopt, very early on, doping behaviour potentially harmful to their health. Moreover, if doping was permitted, the victories and achievements of the champions would become largely

[6] The tests take the form of strips (immunochromatographic tests for rapid reading) and are more than 99% consistent with the GC/MS reference method (gaseous phase chromatography coupled with mass spectrometry). The test is based on the principle of competitive linkage between the drug present in urine and the same drug immobilised on a membrane opposite antibodies marked with colloidal gold.

the result of the prowess of the scientific teams seeking notoriety at the risk of seeing the athlete lose his identity and turn into a human guinea pig.

Anti-doping methods

The following table outlines (with simplification) the elements of action against doping which seem to me essential.

Control strategy	- Unexpectedness of the procedure - Biological profiling method - Information
Deterrence	Penalties
Prevention	Making the educational community aware
Research	- Developing direct and indirect detection methods - Validation of the biological profiling method - Epidemiology of doping and of its hazards
Combating of trafficking	- Co-operation among the various state agencies

Concerning action against trafficking in particular, I wish to mention firstly the recent action of the French customs service in respect of the post and Internet, with interception of parcels mainly addressed to amateur sports participants, and secondly the role of the central agency for prevention of damage to the environment and public health, Office Central de Lutte contre les Atteintes à l'Environnement and à la Santé Publique (OCLAESP)[7].

The future

In future, the anti-doping effort will have to contend with the explosion of biotechnology and genetic engineering and more specifically:

- modulation of genetic expression;
- evolution of gene therapy;
- development of nanobiotechnologies;
- progress of synthetic biology.

Several innovative methods[8] are mastered throughout the world by numerous small biotechnology laboratories which are hard to record and control, unlike the mainstream pharmaceutical industry with which it is possible to adopt a contractual approach in order to be informed of the new molecules which have a doping potential and await marketing.

Conclusions

Doping poses a big danger to public health, particularly with young people. It reduces the health benefits to be expected from regular participation in physical and sporting activities when this is well suited to the capabilities of individuals.

It is necessary to take into account the socio-economic context of doping and to be aware of the friction between action and pretence of action which arises from the multiple competing interests of the various players, including athletes (also victims of their commercialisation); coaches; doctors and their environment; clubs and federations; entertainment organisers; sponsors; industrial and commercial enterprises linked with sports; the media; sports bookmakers; the world of politics.

Against such a complex background, to be successful, action to curb doping presupposes a strong political will. The battle must be waged with complete independence, away from the pressure of economic, sporting or political interests, and be sustained by a potent investment in prevention and research.

[7] For example, this office seized in a trafficker's home a list of names including over 700 amateur sports players regularly ordering heavy doping products (EPO, GH, AICAR, A.S.).

[8] For example: biochips; "smart" pills or implants; biosensors; neurochips; transgenes; nanolaboratories; DNA engineering.

The National Medical Academy has made six recommendations:

1. Reaffirm the competence of the state to deploy an assertive policy on prevention of doping, a major public health issue, pursued with complete independence from the pressure of economic, sporting or political interests. Accordingly, as stipulated by the legislation and the Code of Ethics, one must:
   - guarantee by statute the independence of doctors vis-à-vis the sports federations and the professional leagues;
   - assert their authority over all health staff; their consent must be secured for every intervention with a therapeutic or preventive purpose by unqualified persons.

2. Set up an observatory of accidents and complications linked with doping. The Academy asks that every death on a sports ground be mandatorily followed by an autopsy including an anatomo-pathological, toxicological and genetic examination.

3. Develop all possible collaborations to pool useful information on:
   - doping substances, including those being developed and the analytical methods allowing their early detection;
   - their sale on the Internet (in collaboration with the access providers), counterfeits included;
   - their supply through the post (in collaboration with the customs and postal services).

4. Act at international level to have a number of modifications introduced into the World Anti-Doping Code. It is necessary in particular:
   - to lighten the sports schedule or lay down standards prescribing, according to the sport, an individual limit to the number of participations by athletes in competitions;
   - to limit the competence of the international federations solely to the major sports events of genuinely international standing. Indeed, the situation is to be avoided where too many national, perhaps regional, contests with large amateur participation take shelter behind a status of effective extraterritoriality, thereby evading the binding rules of anti-doping as set out in the French Sport Code.

5. Deploy a policy on research, specifically:
   - epidemiological, for determining the extent of the scourge and the health damage which it causes;
   - on topics of current scientific interest (for example: new analysis techniques, new products and methods generated by biotechnology, new anti-doping behaviour, development of biological profiling methods).

Implement advanced training on doping, its methods and its hazards for all educators including those in state education, who must become an essential fulcrum of prevention among young people. Include this concern in the initial and in-service training of the health professionals who represent essential bearers of prevention messages. As part of the application of the new law of 1 February 2012, ensure the entry of information items on doping in the franchises of audiovisual broadcasting companies.

2.2. Contribution by Mr Herman Ram, Director of the Dutch Anti-doping Authority

Anti-Doping Authority the Netherlands ("Dopingautoriteit")

The Dutch National Anti-Doping Organization (NADO) is a foundation, based on private law. We were founded in 1989, as a direct result of the adoption of the CoE Anti-Doping Convention in the same year. This CoE Convention was essentially the first instrument for developing and harmonizing anti-doping measures on the international level. The Convention assigns a *supportive role* to national governments, and the Dutch government was the first to establish an independent NADO. So we are the oldest independent NADO in the world. Our work is based on the World Anti-Doping Code (the Code). Defrayment comes from the public authorities (represented by the Minister of Health, Welfare and Sport) *and* civil society (the sports community, represented by the National Olympic Committee, NOC) and alignment on policies (within the framework of the Code) takes place with these organizations on a regular basis. The close cooperation between government, sport and the NADO is, in our opinion, the key factor that makes effective anti-doping work in the Netherlands possible. Operational decisions, however, are taken independently by the NADO and no interference with our operations has been experienced at any time. Government exerts influence by appointing Board members, and through funding conditions. There is currently no specific anti-doping legislation in place in the Netherlands, so our 'authority' is based on private law (especially Association Law) only. This, however, will change and I will come back to that later on.

How we perceive ourselves

In our opinion, the Dutch NADO ranks among the top NADOs of the world in terms of quality. And both our government and our NOC take doping matters very seriously. However, the size of our organization is not completely in line with the duties we have, nor is it completely in line with the position and ambitions of Dutch sport.

Because of financial constraints, building and maintaining a strong testing program and a comprehensive Athlete Biological Passport program are difficult. But focusing too much on analytical tools is no advisable. Indeed, testing mechanisms may be further improved, but much more progress can be made by developing *Intelligence & Investigations*, and integrating that work field with testing programs. Within our NADO we have integrated both in one new Department.

As I will try to illustrate in my presentation today, we cannot deny that our work is also limited by other issues. Our work is hindered because the priority given to doping issues differs (at least in our opinion) too much between countries and between law enforcement agencies. And our work is hindered because there still are legal obstacles which do not allow us to fulfill all our obligations (investigation, exchanging information, etc.) under the Code. For these reasons, we welcome wholeheartedly the legislation that our government is preparing.

The World Anti-Doping Program (WADP)

When we take into account that the Code has been in place for only 11 years, it is amazing what has been achieved since. Within the Olympic family and IOC recognized sports, considerable progress has been made towards true harmonization of programs and procedures. In addition, the doping issue has been put on many agendas globally, and strategic relationships with the pharmaceutical industry, Interpol and other organizations have been developed.

The weaknesses of the WADP show great similarities with those on the national level. The shortcomings in coordination between countries, in legal tools, in prioritization and in funding complicate our work, and limit the effectiveness of the global fight against doping.

Regulating National sport federations (NFs)

In the Netherlands, the implementation of the Code is primarily the responsibility of the National sport organizations. At least 80% of the work of the NADO relates to these NFs. The doping regulations of NFs are the (only) formal basis which allow us to do doping tests, to issue Therapeutic Use Exemptions, to process Whereabouts information, etc. Under the Dutch Association Law, federations have considerable elbow-room to set their own rules for their members and officials, but for doping issues this space is very limited because the Code dictates most rules. We work closely together with our NOC and the affined International sports federations (IFs) to ensure that all NFs live up to their obligations under the Code.

Implementing anti-doping regulations in NFs (a number of which are very small, and do not employ any professional staff) is a challenge. However, and notwithstanding the fact that there is ample room for improvement, our real challenges are not in this field anymore.

The limitations of the present legal foundations for anti-doping work

Apart from financial constraints, there are at least six relevant limitations to our capability to do our job:

- The first question is whether the present situation (NF regulations based on Association Law and no legal basis outside the NFs) offers a sound enough foundation for our work. After all, our work may involve invading an athlete's privacy, may imply the processing of sensitive personal data (including medical data), and may result in severe sanctions (long periods of ineligibility). Over the years, more and more doubts have risen concerning the processing of (sensitive) personal data, and proposed / expected changes in (European) data protection law have definitely strengthened these doubts.
- The second question is whether the present legal framework allows us to cooperate with other organizations, both in the Netherlands and abroad, and to exchange information with those organizations. On the national level, a number of state agencies, especially law enforcement agencies, perform tasks that are closely interlinked with the tasks of the NADO. On the international level, anti-doping work is organized as a global network of ADOs (both NADOs and IFs), and this network can only

function if ADOs are allowed to contribute to the network. Numerous problems concerning cooperation and exchange of information with our organization are encountered on a daily basis. On top of that, it is clear that international exchange and alignment between law enforcement agencies has its problems as well.

- The third question is: how to enable the NADO to develop the field of Intelligence & Investigations, knowing that doping tests are (although indispensable) not the suitable tool for uncovering many anti-doping rule violations. Trafficking, fraud, possession and many other violations cannot be uncovered in a laboratory.
- The fourth question is how to bind all persons relevant to anti-doping work – doctors, coaches and other athlete support personnel (ASP), board members, foreign athletes and others – to the rules, and to ensure that Anti-Doping Rule Violations are dealt with in a disciplinary process that is based on the principles of Fair Trial. We face great difficulties in prosecuting ASP. And foreign NADOs - who regularly transfer disciplinary files concerning Dutch citizens to the Netherlands - may very well find out that we lack the jurisdiction that is necessary to start disciplinary proceedings in the Netherlands.
- The fifth question is how to fight doping in sport outside the 'regulated' NFs (if and as far as this is seen as part of the national anti-doping policy). This question may concern a wide range of organizations, including specific (non-Olympic) sports organizations, new (upcoming) federations, fitness centers, and other (commercial) sports organizations. In general, the NADO has no legal foundation in these fields.
- The sixth question is how to ensure that high (or at least: higher) priority is given to doping issues by all relevant organizations and institutions, all over Europe. Presently, it cannot be denied that – even where and when an adequate legal framework is in place – solving doping matters is not always very high on priority lists.

Legislation

As an answer to the first, second and third question, the Dutch government has concluded that the current situation is no longer tenable, and our government is preparing legislation which will be sent to Parliament before the end of August 2015. The intended law must provide a sound legal basis for all anti-doping work, and must bring down the legal obstacles that prevent us from 1. cooperating, 2. exchanging information and 3. investigating, as we are obliged to do under the Code. We applaud this initiative of our government.

The intended legislation is not aimed at binding new groups (ASP, etc.) to the rules, but finding solutions for that problem is expected to be easier once the legislation is in place.

The intended legislation is not aimed at expanding the working field of the NADO either, but it might facilitate new activities outside the NFs, if and when such activities are agreed upon. There is no intention to criminalize the use of doping substances, while trafficking and producing are already criminal offences (and that situation will remain unchanged).

Finally, the intended legislation will not automatically lead to a higher priority for doping matters, but it certainly could help in that respect.

Quango

As a consequence of the intended legislation, the present Foundation will be dissolved at some point in the future, while its duties and activities will be transferred to a new Quasi Autonomous Non-Governmental Organization (Quango), based on public law. Although the Quango will fall under the direct political responsibility of the Minister of Health, Welfare and Sport, the existing (and valued) close ties with the sports community will be safeguarded in the governance structure.

The operational independence of the NADO will be assured by articles in the law that will explicitly exclude the interference of the Minister in the daily operations, and that will also explicitly make sure that the Minister cannot force the NADO to disclose or transfer any personal information. The independence of the NADO is essential, to make sure that the NADO can fulfill its duties in an objective way. A recent German documentary illustrated what may happen if this independence is not guaranteed. But let me stress again that I have never noticed a single incident of undesirable government involvement.

Fitness centers and grassroots sports

At present, the NADO is responsible for a Prevention Campaign 'True Sport' that targets the owners, managers and users of fitness centers. This campaign, funded completely by our government, has been

developed over a period of more than 20 years. We provide a broad range of objective and reliable information to the interested visitors of gyms. Scare tactics are *not* part of our approach, and we present the choices that athletes should make as *rational* choices, not as *ethical* choices.

However, it is clear that the use of Performance Enhancing Drugs (PEDs) and Image Enhancing Drugs (IEDs) in gyms and fitness centers is not diminishing, while there are reasons to suspect that the numbers are still on the rise. In 2009, a survey showed that approximately 160.000 visitors of Dutch gyms used one or more PEDS/IEDs, which means that the risk to public health because of the abuse of such drugs is far bigger in the fitness world than it is in organized sports.

However, introducing doping tests in gyms presupposes at least two things, one being a (national) culture towards the individual use of drugs that makes the suppression of such abuse by testing feasible, and the other one being the organization of the fitness world in a way that makes effective sanctioning possible. Presently, both conditions are not met in Dutch society and neither our government nor we as a NADO have plans or wishes to introduce a national testing program in gyms. Testing in fitness centers on request of the owner (and based on a contract / general conditions for gym users) could be feasible in the future, but only in specific situations.

Nutritional supplements

One other issue that I would like to draw your attention to more specifically are the problems we encounter concerning nutritional supplements. Supplements are used by many athletes, both at the top and the grassroots level. It has been clear for years that an astounding percentage of these supplements are of poor quality, do not contain the ingredients that are mentioned on the labels / websites (or do not contain the right amount of these ingredients) and may very well contain (undeclared) doping substances or other potentially harmful ingredients.

This situation constitutes a serious health hazard for the general population, *and* a specific additional risk to elite level athletes that undergo doping tests. Tested athletes may unintentionally commit an Anti-Doping Rule Violation (with severe disciplinary sanctions as a consequence). In the Netherlands, in approximately 20% of the disciplinary cases, contamination or deliberate spiking of nutritional supplements is submitted by the athlete as the cause of the Adverse Analytical Finding.

What the CoE – in our opinion – could do above all

The criminal investigation and prosecution of *trafficking and producing* of doping substances could be made more effective by further encouraging the harmonization of the (criminal) legislation in Europe, especially if the criminal investigations themselves are enhanced and intensified.

In our opinion, the legal and cultural situations in the member states of the CoE are so diverse that criminalizing the *use* of doping and/or the introduction of doping tests in gyms cannot be harmonized in Europe, and should therefore not be part of CoE's policies. Advancing the sharing of information on these topics between member states (and assessing that information), however, could be very helpful.

Coordination with EU

The report Strategy for Stopping Steroids (the result of a collaboration between five European NADOs) sums up nine Perspectives and Recommendations. As a country with over 20 years of experience in the field, we fully support the conclusions of the report, and we respectfully suggest that these nine points could also be taken into account by the CoE, in order to achieve true effectiveness in this field in Europe.

We see as the highest priorities in this field:

1. A better insight in the health risks of the use of nutritional supplements. More research is therefore needed on a European scale, also to define better regulations and preventive actions to protect European consumers. We are currently doing further research into the doping substances that can be found in (over the counter available) food supplements, and we will publish the results later this year.
2. Research to improve medical screening, treatment (physical and mental) and harm reduction for users and ex-users of doping. This should also lead to better prevention strategies. In the Netherlands, one hospital has established in 2010 a polyclinic for users and ex-users of anabolic steroids, which serves as a national knowledge center on this topic.

3. A European conference to share effective preventive strategies to combat doping in recreational sports with the following topics: information & education, training of staff members, treatment & harm reduction. I hope that your visit to our country today will be a good stimulant for such a conference.