



MRS MARJAN OLFERS

*Professor Sports Law,
VU Amsterdam University*



Anti-Doping Conference – June 15, 2016 - Amsterdam



Play true?



rules have seen some variation over time and from place to place.

Fair play... and now: doping rules/matchfixing rules etc.

- doping “standard practice” till WW I (Hoberman, 1992).
- Since 1920 use of doping ‘just’ a violation of the rules of play
- 1967 (IOC) drug-testing (Todd & Todd, 2001).
- 1968 dopinglist
- 1982 anti-doping violations NFL
- 1999 WADA



Pyramid structure

WADA

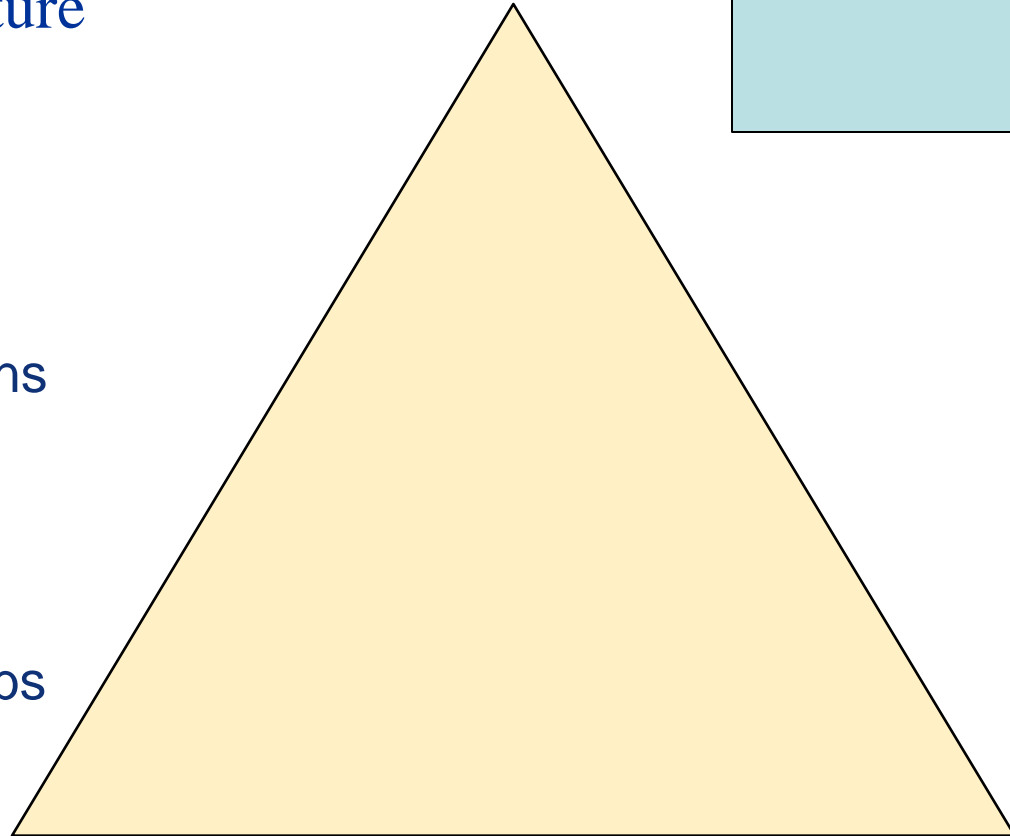
IF/IOC

Regional/European federations

National leagues/NOC

Grass roots, federations/clubs

Athletes



- DO ATHLETES HAVE A CHOICE?
- Comply with the rules or leave organized sports.

WAD-CODE

- The purposes of the World Anti-Doping Code (...) are:
- To protect the *athletes'* fundamental right to participate in doping-free sport and thus promote **health, fairness and equality for *athletes* worldwide**, and
- (...)

- Health?
 - Regulation focuses on: small group of athletes (the testing pool). Attracts the most public attention.
- Equality?
 - What about ?

... according to CAS

- ‘... Once a certain method is identified as Prohibited Method, it must be considered as doping whether or not it is potentially harmful to athletes’ health and/or capable of enhancing their performance... Having identified UV Blood Transfusion as a Prohibited Method, there is no need to investigate further whether it may harm the athletes’ health or enhance their performance’.
- CAS 2002/A/389, 390, 391, 392 & 393 (A., B., C., D. & E./International Olympic Committee (IOC)), award of 20 March 2003

ECJ: MECA MEDINA C519/04, 18 July 2006

- In assessing compatibility of sporting rules with EC law rules, account must be taken of:
- (...) its objectives (Healthy rivalry between athletes, according to ECJ); and
- whether the restrictive effects are inherent in the pursuit of the objectives, and are proportionate to them.

the ECJ carried out a proportionality test examining whether in this individual case the rules went beyond what is necessary to achieve those objectives as regards a) the threshold for the banned substance b) the severity of the penalties.

- Athlete
- AND...
- Will and can he/she fight for his/her rights?
- Can he/she trust the authorities?
- Can he/she trust the laboratories?

- Can he/she (think of minors and doping) be forgotten (internet)?

- Anti-doping regulations:
 - drifting away from the objectives;
 - Have become an end in itself;
 - Too much tension between justice and efficiency;
- Uniformization and harmonization should not stand in the way of righteous (disciplinary) law and the application of legal principles.
- => This requires at least a more democratic structure and balancing of interests (GOOD GOVERNANCE)



EU Anti-Doping conference

EU
2016

Amsterdam, June 15, 2016



MR THOMAS ZERDICK

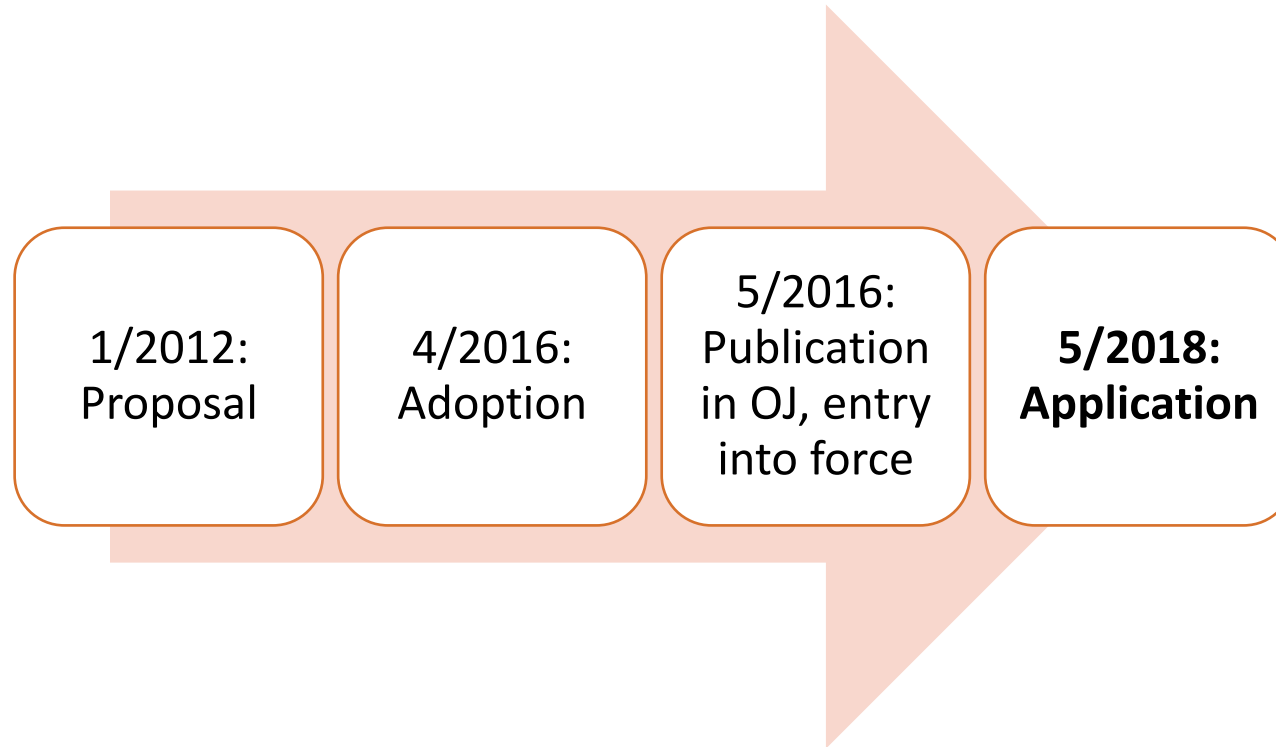
*Deputy Head Personal Data Protection,
Directorate-General Justice and Consumers,
European Commission*



The General Data Protection Regulation (GDPR)



Timetable EU data protection reform



**KEEP
CALM
AND
PREPARE FOR
THE GDPR**



Some things remain ...



- 'Personal data'
- Controller
- Processor
- Data subject
- Supervisory authority
- ...



Some things change...



- Scope
- Accountability
- Processor obligations
- Data portability
- Fines
- EU consistency



Processing of personal data in compliance with the GDPR requires:

1. clear attribution of roles and responsibilities: at any given time, controllers should be able to identify the **5 W's (Who/Where/What/When/Why)** of personal data under their control.
2. a sound legal basis, i.e. a clear legal framework at Member State level for public interest processing



References

- **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)
 - entered into force on 24 May 2016, and it shall apply from 25 May 2018.
- **Directive (EU) 2016/680** 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA
 - entered into force on 5 May 2016 and EU Member States have to transpose it into their national law by 6 May 2018.



More information

- European Commission:
 - http://ec.europa.eu/justice/data-protection/index_en.htm

- Article 29 Working Party:
 - http://ec.europa.eu/justice/data-protection/article-29/index_en.htm



Thomas Zerdick, LL.M.

Deputy Head of Unit “Data protection”
Directorate-General Justice and Consumers
European Commission

thomas.zerdick@ec.europa.eu

http://ec.europa.eu/justice/data-protection/index_en.htm



EU Anti-Doping conference

EU
2016

Amsterdam, June 15, 2016



PANEL DEBATE

Mrs Marjan Olfers, VU Amsterdam University

Mr Thomas Zerdick, European Commission

Mr Herman Ram, Anti-Doping Authority of the Netherlands

Mr Jean Michel Saive, Chair Athletes Commission of EOC

Mr Jeff Reymond, Secretary General, EU Athletes

Mr Dan Cooper, expert on behalf of WADA



**Elite athletes must accept a
level of privacy intrusion.**



**Doping control samples must
be stored for at least 25
years.**



In tracing doping use, all tracing methods should be allowed.



EU Anti-Doping conference

EU
2016

Amsterdam, June 15, 2016



LUNCH

Be back at 14.15