



World Players Association
#WorldPlayersUnited

Mr. Olivier Niggli
Director General
World Anti-Doping Agency

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Nyon, Switzerland, Monday 17 July 2017

The governance of WADA

Dear Mr. Niggli,

FIFPro's Jonas Baer-Hoffman and I would like to thank you and René Bouchard for taking the opportunity on Friday evening at MINEPS VI to discuss the present review of the governance of WADA.

As you know, the World Players Association ("World Players") brings together some 85,000 professional players and athletes who are members of more than 100 player and athlete associations in over 60 countries ("members"). Almost all members are employed as full-time professionals in a variety of team sports. Approximately 80,000 members are required to observe the provisions of the WADA Code as conditions of their employment and participation in sport. However, none are included within WADA's decision-making processes; nor can they freely negotiate anti-doping related matters despite the fundamental sporting importance of those matters and their substantial impact on the workplaces, rights, health and safety of athletes.

On 16 June 2017, I had the opportunity to have an extensive telephone conversation with Akaash Maharaj in his capacity as an independent expert member of the Working Group on WADA Governance Matters. Following that conversation, I have consulted with our affiliated player and athlete associations whose members are bound by the WADA Code. They are willing to work constructively with WADA to achieve an enhanced governance framework that will enjoy the trust and confidence of WADA's key stakeholders: sports, governments and, of course, athletes.

With the Working Group on WADA Governance Matters due to meet on 20 July 2017, the purpose of this letter is to introduce the key principles which we believe should guide the enhancement of WADA's governance. These give rise to four fundamental pillars which can deliver the best possible governance of the world's anti-doping effort. They are needed to ensure that effort can meet the ever-increasing challenges of protecting athletes and combatting doping in a strong, effective, unified and just manner.

Guiding principles

Four guiding principles underpin the approach introduced in this letter:

- I. The enhanced governance framework must be independent. It is acknowledged by a number of important experts and stakeholders that WADA's governance structure is presently conflicted which can undermine compliance with the WADA Code.
- II. WADA must be accountable. Independence, without accountability, will mean that WADA is only accountable to itself, which is the antithesis of good governance.
- III. Protecting, engaging and regulating athletes and upholding their rights and responsibilities is central to the mission and undertaking of WADA. Accordingly, athletes must play a central role in any enhancement of the governance of WADA.
- IV. WADA must uphold internationally recognised human rights and governance standards and principles.

Four pillars of an enhanced governance framework

The four principles give rise to four pillars on which WADA's enhanced governance can be built:

1. An equal partnership between sport, government and athletes

It is necessary to invite the world's athletes to be equal partners with sport and government in the fight against doping. The WADA Statutes describe the Foundation Board as an "equal partnership" between sports organisations and governments. This should be replaced by a tripartite partnership between the three stakeholders who must take ownership of and have ultimate responsibility for the anti-doping effort for it to be successful: sport, government and athletes.

An enhanced WADA Foundation Board should effectively act as WADA's general assembly or congress and retain legislative responsibility for the WADA Code. It should be made up of an appropriate number of representatives, with:

- (a) 1/3 of the seats being elected by the sports organisations;
- (b) 1/3 of the seats being elected by the governments; and
- (c) 1/3 of the seats being elected by the athletes in free elections based on the principles of democracy and proportional representation. In short, the athlete representatives should be chosen by the athletes themselves and reflect the elite global athlete population that is bound by the WADA Code.

2. Ensure the leadership of WADA is fully independent of, and accountable to, sport, government and athletes

WADA's Executive Board should be selected to ensure it has the requisite skills, experiences and diversity to lead the world's anti-doping effort. It should be of a size that ensures it operates strategically and makes informed, knowledge-based and objective decisions without the suggestion of political influence or the existence of a conflict of interest. All members must be independent of sport, government and athletes.

The WADA Executive Board should be responsible for the executive functions of WADA, including:

- (a) the implementation and enforcement of the WADA Code (and the necessary executional functions such as testing, investigations, prosecution, education and training) in accordance with the regulations and policy promulgated by the WADA Foundation Board. Importantly, the executive leadership of WADA must have the power and capacity to act without fear or favour against all relevant wrongdoers (governments and sports and not only athletes) to ensure that systemic doping and corruption can be addressed and enforced at its source;

- (b) developing and executing the strategy for WADA in the pursuit of its mission;
- (c) the administration of WADA; and
- (d) the making of decisions not reserved by law or the constitution of WADA to the WADA Foundation Board.

The WADA Executive Board should be elected by the reconstituted WADA Foundation Board.

3. Embed the separation of powers between the legislative, executive and judicial functions of WADA and the anti-doping system to ensure an effective and fair system of justice.

The enhancement of the WADA Foundation and Executive Boards as recommended in this letter would allow for WADA to reform the consistency, effectiveness and fairness of its system of justice by creating a global and independent arbitral system to hear and determine anti-doping matters both at first instance and on appeal. That system could be executed globally, regionally and nationally to ensure the efficacy and proximity of the justice system to the relevant matter. The justice system must be accessible and affordable for all.

This would allow the judicial functions to be removed from the various sports and vested in a global anti-doping chamber. With a number of substantive and procedural reforms being made to ensure compliance with internationally recognised human rights standards, such a function could sit with the Court of Arbitration for Sport (“CAS”). However, to carry out this function, the CAS would need to adopt measures to ensure its actual and perceived independence from the sporting bodies and its equal accountability to the parties to any matter before it.¹

This essential reform would also allow for each anti-doping case to be independently looked at on its merits, a fundamental legal principle essential if justice is not only to be done but to be seen to be done.

4. Enshrine the fundamental rights of athletes within WADA’s enhanced governance structure.

The rights of athletes sit at the heart of the anti-doping effort. We empathise with the recent commitment of the WADA Athletes’ Committee to develop a bill of athletes’ rights. Much progress has been made in recent months with the advancement of human rights in world sport especially with policy commitments being made by the International Olympic Committee, the Commonwealth Games Federation, FIFA and UEFA to the “United Nations Guiding Principles on Business and Human Rights” (“UNGPs”). Consistent with this, the Kazan Action Plan crafted by UNESCO and unanimously adopted over the weekend at MINEPS VI identifies the proactive safeguarding of athletes’ rights as an essential policy outcome if the integrity of sport is to be protected. The Kazan Action Plan provides that *“the fundamental human rights of everyone affected by or involved in the delivery of physical education, physical activity and sport must be protected, respected and fulfilled in accordance with the (UNGPs).”* The UNGPs, therefore, provide the accepted standard for embedding the rights of athletes in sport including within WADA’s governance framework.

We trust the principles and pillars of enhanced WADA governance introduced in this letter are welcome at your end. We see merit in discussing WADA governance in isolation and without reference to the content of the WADA Code. Accordingly, we are willing to engage in an informed and comprehensive discussion to assist WADA in building an enhanced governance framework that enjoys the trust and confidence of sport, government and athletes and, in turn, the public and fans of sport to whom we are all ultimately accountable.

¹ Refer for example to John Ruggie, “For the Game. For the World. FIFA and Human Rights,” 14 April 2016, pp. 26 and 35, including recommendation 6.2.

We look forward to hearing from you.

Yours sincerely,

A handwritten signature in blue ink that reads "Brendan Schwab". The signature is written in a cursive, flowing style.

Brendan Schwab
Executive Director