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COMMITTEE FOR THE DEVELOPMENT OF SPORT

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BILL

concerning prevention of the use of doping agents in
connection with sports competitions and events

Document submitted by FRANCE

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EXPLANATORY MEMORANDUM

The fundamental principles of sport include the physical and moral development of the individual, and the encouragement of fair and equitable competitions.

Doping infringes these principles in that it artificially alters sporting performances and has long-term ill-effects on athletes' health.

The Act of 1 June 1965 on prevention of the use of stimulants in connection with sports competitions was a first attempt to combat abuses of this kind. However, its application in practice was limited by its unduly restrictive definition of doping and by the fact that the strictly legal procedure prescribed gave rise to criminal sanctions which, owing to their unsuitability (fine of 500 to 5,000 FF for offending competitors; 3 months' to 5 years' imprisonment for suppliers of doping agents), did not constitute truly effective deterrents.

The considerable development in doping methods over recent years has made the detection of offences more difficult, and so change was necessary to render the preventive machinery more effective.

The following Bill is designed to tighten up measures in this field through a broader definition of doping, increased possibilities for control and a scale of penalties.

The central feature of the new machinery is a national anti-doping commission consisting of experts, including medical ones, and of governmental and sports representatives. The commission's function will be to propose to the Minister responsible for sport the administrative sanctions to be imposed on offenders, whether players or suppliers.

Section 1 places doping control in the context of the sports movement by referring to the competitions and trials organised by sports federations. The list of prohibited substances is established by joint ministerial orders. There are specific provisions regarding suppliers in the broad sense, namely all persons connected with sports players who assist or encourage the use of the prohibited substances.

In Section 2, a purely administrative procedure replaces the procedure in Section 3 of the Act of 1 June 1985, which relied on police investigators. Obstructing the officers responsible for controls and investigations likewise ceases to be a criminal offence, but instead carries administrative penalties. The system of accredited doctors prescribed by the 1965 Act is nevertheless retained, and veterinarians are included.

Section 3 specifies the arrangements under which the controls and investigations can be conducted, and provides for a report for transmission to the Minister and to the relevant federations, with copy to the person concerned.

Article 4 sets out the controls which the officers mentioned in Section 2 may carry out.

Section 5 extends the certified officers' scope for investigation while at the same time providing adequate guarantees, in particular the intervention of the court judge, so as to strike a balance between effective doping control and the necessary protection of individual freedom.

Section 6 emphasises that participation in sports competitions entails the acceptance of rules guaranteeing fairness, and in particular screening tests. It also defines the conditions of testing by doctors and veterinarians.

Section 7 establishes administrative sanctions against offenders, whether players or suppliers. The sanctions, ordered by the Minister responsible for sport, are of an interim nature and entail immediate consultation of the national anti-doping commission, which has sole competence to propose a final penalty to the Minister.

Penalties for players, under the new legislation, are similar to those imposed by sports federations with a public service mandate, but are extended to all such federations, thereby ensuring the general application which hitherto depended on agreements between federations.

Section 8 establishes the national anti-doping commission, whose membership is to be determined by a Conseil d'Etat decree specifying the adaptations required to cater for the variety of cases arising, particularly according to whether animals are used, and for the sporting disciplines involved, while securing to the commission the flexibility on which its effectiveness depends.

Section 9 concerns the final administrative sanctions proposed by the national commission and ordered by the Minister responsible for sport.

Where players are concerned, the suspension measures already applicable in the individual federations are extended to all sports federations.

Where suppliers are concerned, what used to be an accessory penalty under Section 4 of the 1965 Act, namely disqualification from any form of participation in the organisation of sports competitions, becomes the principal penalty.

Section 10 retains the direct criminal sanctions for suppliers and, according to the prohibited substances involved, refers to the penalties prescribed in Articles L.626 and L.627 of the Code of Public Health. It extends the penalties under Article L.626 to persons administering prohibited substances to animals.

This section further prescribes criminal sanctions against persons, whether players or suppliers, failing to observe the suspensions imposed on them by the Minister responsible for sport at the proposal of the national commission.

BILL

concerning prevention of the use of doping agents
in connection with sports competitions and events

Section 1 - The substances on the list established by regulation after consultation of the national anti-doping commission, being intended either to boost artificially the capabilities of humans and animals or to conceal the use of the substances administered for that purpose, shall not be used during or in preparation for the sports competitions and events organised or approved by sports federations.

PART I

CONTROLS

Section 2 - Officers of the youth and sport inspectorate and doctors or veterinarians accredited by the competent ministers shall conduct such investigations and tests as are necessary for the implementation of the present law, either on their own initiative, or at the request of the sports federation, or as instructed by the Minister responsible for sport.

Section 3 - Reports shall be made on the inquiries, tests and investigations prescribed in this part.

The reports shall be transmitted to the Minister responsible for sport and to the federations concerned, with copy to the interested parties. The reports shall be deemed authentic failing proof of the contrary.

Section 4 - The persons mentioned in Section 2 may enter premises where sports competitions or events are in progress, or where training is organised by the sports federations, ask to see the persons and animals present, and gather all information required for the performance of their task. Personal information of a medical nature shall be collected by accredited doctors only.

Section 5 - Without prejudice to the provisions of Section 4, the investigators may not make inspections or seize documents or effects in any place whatsoever except in the course of investigations conducted in accordance with Section 2 and with court authority issued by order of the presiding judge, or his representative, of the regional court within whose district the premises to be investigated are located. Where these locations are under the jurisdiction of several courts, and concurrent investigations in each location are required, a single order may be issued by one of the competent presiding judges.

The judge must satisfy himself that the request for authority before him is valid; the request shall contain all particulars calculated to justify the inspection.

Inspection and seizure shall be performed under the authority and supervision of the authorising judge, who shall appoint one or more police officers to assist in the aforesaid operations and to report to him on the conduct thereof. Where the operations are conducted outside the jurisdiction of the regional court, the judge shall delegate supervision by letter of request to the presiding judge of the regional court within whose district the inspection is to be conducted.

The judge may visit the premises during the inspection, and may at any time decide to suspend or terminate it.

The order referred to in the first paragraph of this section shall be subject to appeal before the Court of Cassation only, in accordance with the provisions of the Code of Criminal Procedure. Such appeal does not suspend enforcement.

Inspections shall be conducted in the presence of the occupier of the premises or his representative, commencing not before 6 am or after 9 pm on private property; the time of inspection is nevertheless unrestricted in the case of premises open to or catering for the public.

Evidence and documents may be examined prior to seizure by the investigators, the occupier and the police officer only.

Inventorying and placing under seals shall be carried out in accordance with Article 65 of the Code of Criminal Procedure.

The originals of the report and the inventory shall be transmitted to the judge ordering the inspection.

Evidence and documents which are no longer needed to establish the facts shall be returned to the occupier of the premises.

Section 6 - The doctors and veterinarians mentioned in Section 2, under the supervision of the anti-doping commission, may conduct medical, clinical and biological sampling and examinations to detect the presence of one or more of the substances covered by this law in the system of any person or animal taking part in the trials, competitions or training referred to in Section 4.

Any player taking part in the competitions, events or preparatory training mentioned in Section 4 shall submit to the aforesaid sampling and examinations, failing which penalties prescribed in Section 9 shall apply.

Section 7 - Where the tests and investigations provided for in Sections 2 to 6 reveal that a player has infringed the provisions of Section 1, the Minister responsible for sport may provisionally disqualify him from participating in the sports competitions and events organised or approved by the sports federations, pending the decision taken at the proposal of the national anti-doping commission under Section 9. The Minister responsible for sport shall consult the commission forthwith. The effect of the provisional disqualification shall not exceed four months.

The same measures may be taken against persons refusing, obstructing or attempting to obstruct the controls and investigations provided for in Sections 2 to 6.

Any person administering or assisting or encouraging the use of the substances prohibited by this law may be disqualified by the Minister responsible for sport for the same period as above from participating whether directly or indirectly in the organisation or conduct of sports competitions or events or preparatory training, and from performing any related function.

PART II

THE NATIONAL ANTI-DOPING COMMISSION

Section 8 - A national anti-doping commission, answerable to the Minister responsible for sport, shall be set up. It shall be chaired by a member of the Conseil d'Etat and composed equally of government representatives, representatives of the sports movement and qualified individuals.

Section 9 - At the proposal of the national anti-doping commission, consulted by the Minister responsible for sport or by a sports federation, the Minister may order that players refusing, obstructing or attempting to obstruct the controls provided for in Sections 2 to 6 be disqualified temporarily or permanently from participating in the sports competitions and events organised by the sports federations. The Minister's decision shall supersede any disciplinary measure taken by the sports federations in the same connection.

The Minister responsible for sport, under the same procedure as above, may order that persons having administered or assisted or encouraged the use of the prohibited substances, together with persons responsible for training, leadership and organisation of sports competitions and events who obstruct or attempt to obstruct the tests and investigations set forth in Sections 2 to 6, be temporarily or permanently disqualified from participating whether directly or indirectly in the organisation or conduct of sports competitions or events and from performing any related function, and also temporarily or permanently disqualified from engaging in the occupation of sports instructor.

PART III

PENALTIES

Section 10 - Any person assisting or encouraging the use of the substances referred to in Section 1 under the conditions defined therein shall be liable:

1. either to the penalties prescribed by Article L.626 of the Code of Public Health in respect of the substances referred to therein or appearing on the list provided for in Section 1 above;
2. or to the penalties prescribed by Article L.627 of the Code of Public Health in respect of the substances referred to therein.

The penalties prescribed by Article L.626 of the Code of Public Health shall apply to any person administering the substances referred to in Section 1 to animals taking part in a sports competition or event, either during or in preparation for such competitions or events.

The same penalties shall apply to anyone who infringes the disqualifications ordered by the Minister responsible for sport under Sections 7 and 9.

PART IV

MISCELLANEOUS PROVISIONS

Section 11 - The arrangements for implementing the foregoing shall be made by decree of the Conseil d'Etat.

Section 12 - The foregoing shall apply to the territories of New Caledonia and dependencies, Polynesia, Wallis and Futuna and the territorial unit of Mayotte.

Section 13 - Act No. 65-412 of 1 June 1965 on prevention of the use of stimulants in connection with sports competitions is hereby repealed.