

From: Tomas Johansson
Sent: den 3 december 2019 14:06
To: Ku Registrar
Subject: VB: Legislation on anti-doping and data protection tillärende på Ku2019/01199/CSM

Hej tillärende

Ingivare är WADA

Mvh Tomas

Från: Rangeon, Florence
Skickat: den 21 oktober 2019 19:04
Till: Tomas Johansson
Kopia: Horwood, Frederique ; Gillot, Sebastien
Ämne: RE: Legislation on anti-doping and data protection

Dear Tomas,

Thanks for your message below and apologies for the late answer. We have reviewed the English summary of the proposed Act on Data Protection in Anti-Doping Work in Sport (the "Proposed Act") discussed in Report SOU 2019:24. We have prepared some comments, that you will find below. We stand at your disposal to discuss these further, please do not hesitate to get back to us should you have any questions.

I will be in Strasbourg later this week and can discuss there if you wish.

Comments based on the English summary of the proposed Act on Data Protection in Anti-Doping Work in Sport (the "Proposed Act") discussed in Report SOU 2019:24:

Legal basis, purposes of processing and international transfers

- With respect to Section 10 of the Proposed Act we highlight that there are other purposes of processing under the World Anti-Doping Code and International Standards that are not reflected here (for instance, anti-doping education and research). To avoid limiting anti-doping work subject to the Proposed Act, a reference to other purposes permitted or required by the Code and the International Standards could be considered.
- To provide greater certainty to anti-doping stakeholders subject to the Proposed Act, it may be helpful to expressly recognize that anti-doping work serves a public interest, significant public interest (for sensitive data), and important public interest (for the purpose of transfers).
- For sensitive personal data, we assume that Section 12 does not seek to limit other possible legal grounds for processing. For instance, we highlight that Articles 9.2(2)(f) and 9.2(2)(j) may in certain circumstances be relevant legal grounds for the processing of sensitive personal data in the context of anti-doping work. We similarly assume that the Proposed Act would not preclude the processing of non-sensitive personal data on the basis of grounds other than public interest. For instance, information provided by whistleblowers, or in certain cases, for research purposes, may be processed on the basis of consent.
- Given the cross-border / global nature of anti-doping work and the multitude of actors involved, we would respectfully recommend revisiting the issue of whether a specific provision must be made on this topic in the Proposed Act. For instance, given the legal bases referred to above, it may be helpful to specify that transfers of personal information for anti-doping purposes are made pursuant to the recognized public interest of the fight against doping in sport (ref. art. 49, para 1(d) and para 4, GDPR).

Investigations

- We note that the Proposed Act seeks to limit investigative anti-doping work to the Swedish NADO under Section 10. Under the Code and International Standards, all anti-doping organizations, including other entities that would be subject to the Proposed Act, are required to gather intelligence and conduct investigations.
- With respect to Section 11, we highlight that a successful investigative program often includes cross-border law enforcement cooperation (a perfect recent example is Operation Aderlass). In this regard, limiting the scope of permitted processing to Swedish authorities may unduly limit anti-doping investigations by stakeholders subject to the Proposed Act. We also highlight that the International Standard for the Protection of Privacy and Personal Information (ISPPPI) also permits the disclosure of personal data to other types of authorities (e.g. bodies responsible for the regulation of certain professions). Stakeholders have indicated that these disclosures can be necessary when investigating anti-doping rule violations involving physicians or other regulated professionals.
- Finally, we highlight that the proposed retention rule for investigation-related information may be problematic to operationalize and may also unduly limit investigatory anti-doping work subject to the Proposed Act.
 - By way of background, as noted in the summary to the Proposed Act, under the ISPPPI, no specific retention period is provided for with respect to investigation-related information. This is in part because investigations require information from multiple sources to be consolidated and analysed. These other sources of information may be subject to specific retention periods (e.g. samples or whereabouts). Nevertheless, the ISPPPI provides for certain criteria that must always be considered when determining an appropriate retention period (i.e. personal information must be retained only for so long as relevant to fulfill obligations under the Code or as required by law).

- Most anti-doping-related information is in fact retained for a period equivalent to the limitation period to pursue an anti-doping rule violation (i.e. 10 years).
- Considering the above, the maximum retention period under the Proposed Act may be difficult to operationalize for the following reasons:
 - The maximum retention period is much shorter than the relevant retention period for most anti-doping-related information that would be used for the purpose of anti-doping investigations (would this mean, for example, that an investigation team would have to destroy/delete their file in respect of a specific person, even though the information contained in such file – e.g. ABP information - would continue to be available because the retention period had not yet lapsed?); and
 - Determining the “first time” data is processed in the anti-doping context will require additional guidance (e.g. is it the first time a sample is collected or the first time an investigations team runs an analysis involving the results of such sample collection?).

Data subject rights

We respectfully submit that this matter may require further consideration, and may benefit from specific treatment under the Proposed Act. The ISPPPI provides that individual rights may need to be limited, in certain circumstances, to protect the integrity of the anti-doping system. For instance, with respect to the right of access, no advance notice testing, as well as investigations, cannot be disclosed to the target of the testing or investigation without jeopardizing the activity. Similarly, disclosure of certain data related to the athlete biological passport could render this program completely ineffective, as such data could be used for passport manipulation to evade detection of doping practices. With respect to the right to object, the ISPPPI provides for certain circumstances where personal data may continue to be processed, despite a withdrawal of consent (where processing is based on such legal ground). It may be helpful to specify, in the Proposed Act, whether such circumstances are deemed to be compelling legitimate grounds to continue the processing (ref. Art 21(1) GDPR). This would provide greater clarity and certainty to anti-doping stakeholders subject to the Proposed Act.

With kind regards,

Florence

Florence LEFEBVRE RANGEON, PhD

Senior Manager, Government and NADO Relations

Responsable principale des relations avec les Gouvernements et les ONAD

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From: Tomas Johansson <tomas.johansson@regeringskansliet.se>
Sent: mardi, 24 septembre 2019 10:26
To: Rangeon, Florence <Florence.Rangeon@wada-ama.org>
Cc: Horwood, Frederique <Frederique.Horwood@wada-ama.org>
Subject: RE: Legislation on anti-doping and data protection

Dear Florence, we have a draft legislation on data protection in anti-doping in a report that at the moment is out for refarell. The draft law and a Summary in English is Included in the report. You Will find it if you Google on the number of the report - sou 2019:24 if you have any comments they are very Welcomme. And if you dont find the text please get back to me.
All the best from the iPhone!
Tomas

Skickat med BlackBerry Work
(www.blackberry.com)

Från: Rangeon, Florence <Florence.Rangeon@wada-ama.org>
Datum: onsdag 18 sep. 2019 4:24 em

Till: Tomas Johansson <tomas.johansson@regeringskansliet.se>
Kopia: Horwood, Frederique <Frederique.Horwood@wada-ama.org>
Ämne: Legislation on anti-doping and data protection

Dear Tomas,

I hope you're well and you came back safely from Strasbourg.

I have a question for you and forgot to come to you last week to discuss it: I have heard that Sweden is preparing a legislation on data protection related to anti-doping.

Could you give us more information on the process and the content?

Please let us know as well if we can be of any assistance – I copy here Frédérique Horwood, our Lead Counsel on Privacy and Data Governance.

Kind regards,

Florence

Florence LEFEBVRE RANGEON, PhD

Senior Manager, Government and NADO Relations

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