ATHLEX SPORTS JOURNAL

The Enhanced Games: a stress test for Anti-Doping Legitimacy and the Governance of International Sport

1. Introduction

The first Enhanced Games, held in Las Vegas in May 2026, were less revolutionary in sporting terms than their promoters had predicted: only one performance was presented as faster than an official world record, without official recognition, and several events were won by athletes who had not used pharmacological enhancement. Their legal significance nevertheless lies elsewhere. The project created an organized, financed and commercially promoted competition that openly rejects the anti-doping premise on which contemporary elite sport is built. Instead of asking whether an athlete has breached the World Anti-Doping Code, it offers a separate regulatory product in which enhancement is disclosed, medically managed and incorporated into the conditions of competition.

WADA has condemned the Enhanced Games as dangerous and irresponsible, while International Federations possess stronger operational tools capable of discouraging participation. The central question is therefore not whether WADA-compliant sport must recognize enhanced performances; it need not. The more difficult issue is how far incumbent governing bodies may go in defending the clean-sport model without using disproportionate restrictions against athletes or a rival organizer.

The Enhanced Games can thus be used as a stress test for international sports governance. They make visible two related questions. First, does anti-doping regulation retain substantive and institutional legitimacy when athletes experience its enforcement as intrusive or unfair? Second, if sports bodies use eligibility rules and sanctions to limit a competing event, when do those measures cease to be legitimate regulation and become conduct capable of scrutiny under European competition

law? The analysis below combines athletes' rights, judicial proportionality and competition law in order to distinguish the legitimacy of clean-sport objectives from the legitimacy of the means used to pursue them.

2. Anti-Doping Legitimacy and Athletes' Rights

The World Anti-Doping Code remains the cornerstone of elite clean sport. Its system permits in- and out-of-competition testing, whereabouts obligations, the processing of health and location data, evidentiary presumptions and periods of ineligibility. For a professional athlete, however, ineligibility is not only a disciplinary consequence. It can remove access to the principal labour market, terminate sponsorships and inflict lasting reputational and psychological harm. This is why WADA's Initial Human Rights Impact Assessment[1] is particularly important: it accepts the protective purpose of anti-doping while examining the adverse effects that the system can generate for the people subject to it.

The assessment describes an ambivalent picture. Athletes broadly accept the legitimacy of protecting clean sport and recognize the expertise and resources invested in the system. At the same time, they may experience anti-doping organizations less as services protecting their rights than as policing bodies designed to monitor, suspect and catch them. The combination of constant availability, intrusive sample collection, complex procedures, language barriers, inconsistent communication and testing close to competition can create anxiety even among clean athletes. Problems are aggravated when an athlete receives a positive finding and must rapidly understand scientific evidence, B-sample rights, provisional suspension and possible admissions while facing organizations with greater expertise.

The perceived inequality is especially acute where legal representation and expert assistance are unaffordable, or where strict liability exposes an athlete to serious consequences despite inadvertent contamination, mistaken medication or other accidental exposure.

Premature publication of provisional measures can also cause reputational damage before responsibility has been finally established. The report identifies additional vulnerabilities for minors and para-athletes, who may face trauma, inaccessible procedures, medical or TUE-related complexity and greater barriers to appeal.

These concerns do not show that athletes reject anti-doping. They show

[1] World Anti-Doping Agency, *Initial Human Rights Assessment* (Final Draft, December 2025) ('Initial HRIA').

that legitimacy also depends on procedural fairness, transparency, accessibility, proportionality and reciprocity of accountability.

The Enhanced Games exploit precisely this gap between ends and mean. If athletes continue to support health, integrity and equal competition but lose confidence in how those values are enforced, an alternative competition can be presented as a form of regulatory exit. Financial incentives strengthen that possibility, particularly because elite careers are short and prize income is unevenly distributed. The response cannot therefore rely only on deterrence. A more durable model is athlete-centred: predictable procedures, timely communication, proportionate sanctions, safeguards for inadvertent cases and vulnerable groups, affordable legal and psychological support, meaningful education and genuine athlete participation in rulemaking. Such reforms would not abandon clean sport; they would strengthen the legitimacy on which effective enforcement depends.

3. Judicial Review, Necessity and Proportionality

The concerns identified by WADA's human-rights assessment do not mean that the anti-doping framework lacks legal support. European courts have repeatedly accepted that anti-doping may pursue legitimate public-interest objectives while insisting that intrusive rules remain necessary and proportionate.

Meca-Medina and Majcen v Commission[2] is the essential starting point. The Court of Justice rejected the idea that a rule escapes EU law merely because it is 'purely sporting'. In that case, equal opportunity, athlete health, integrity and ethical values in sport were accepted as legitimate objectives, and the contested anti-doping rules were not shown to be disproportionate.

The same logic appears in human-rights review. In *FNASS and Others v France*[3], the European Court of Human Rights accepted that whereabouts requirements and unannounced testing interfered with private life yet regarded the interference as capable of justification by health, fair competition and sporting integrity.

NADA Austria[4], in turn, illustrates the limits of transparency measures: publication connected with anti-doping can serve deterrence and integrity, but it should not become automatic and indiscriminate. Competent authorities must balance the interests at stake, assess proportionality and provide an effective preventive remedy.

[2] *Meca-Medina and Majcen v Commission*, C-519/04 P, EU:C:2006:492.

[3] *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v France*, Applications nos 48151/11 and 77769/13, ECtHR, judgment of 18 January 2018.

[4] *NADA Austria & a., C-474/24, ECLI:EU:C:2026:579, C-115/22*, EU:C:2024:384, Judgment of 14 July 2026.

Taken together, these decisions establish shows how European law does not treat anti-doping restrictions as illegitimate simply because they interfere with privacy, economic freedom or participation: restrictions must be genuinely connected to recognized sporting objectives, supported by adequate safeguards and proportionate to the harm they seek to prevent. This matters when an incumbent sports body reacts to an external competition.

4. Competition Law and European Jurisdiction

The competition-law issue begins with Articles 101 and 102 TFEU. International Federations may act as undertakings when they organize and commercialize competitions, and their regulations can constitute decisions by associations of undertakings when member bodies engage in economic activity. Dominance is not unlawful in itself but the concern arises where regulatory power is used to protect the regulator's own commercial activity from competitors rather than to pursue a genuinely sporting objective. WADA's position is more complex because its public-private composition and standard-setting role are not always economic; the appropriate analysis is therefore functional, focusing on the particular eligibility or exclusionary measure being applied.

MOTOE [5]identifies the structural risk created when the same body regulates access to a sports market and has a commercial interest in organizing events within that market. Such a dual role requires limits, obligations and review because otherwise the incumbent can discriminate against third-party organizers.

International Skating Union v Commission[6] is particularly relevant because the exclusionary mechanism operated through athletes: severe sanctions for taking part in unauthorized events could deprive a rival organizer of the participants necessary to enter the market. The Court required prior-authorization and eligibility rules to be transparent, objective, precise, non-discriminatory, proportionate, established in advance and subject to effective review. *European Superleague*[7] likewise confirmed that prior authorization is not inherently unlawful, but uncontrolled discretion and threats of sanctions cannot be justified by a general appeal to the specificity of sport.

Applied to the Enhanced Games, these principles do not prevent conventional

[5] *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio*, C-49/07, EU:C:2008:376

[6] *International Skating Union v Commission*, C-124/21 P, EU:C:2023:1012

[7] *European Superleague Company SL v FIFA and UEFA*, C-333/21, EU:C:2023:1011

sport from preserving a clean-sport identity. They do, however, make the design and purpose of restrictions decisive. Measures directed at athletes can have an exclusionary market effect if they deny a competing event access to its essential input: elite participants. The legal question therefore becomes whether a rule is necessary to protect health, integrity and the structure of recognized competitions, or whether its practical effect is to foreclose a rival product and preserve an institutional monopoly. The Enhanced Games sharpen that tension because the incumbent system is both a regulator of eligibility and part of the commercial structure of international sport.

The fact that the Enhanced Games are organized outside the European Union does not automatically remove EU law from the picture. The original thesis identifies a possible European nexus where eligibility rules or sanctions are implemented against athletes working or residing in Member States, or where conduct produces effects within the internal market. A dispute could arise before a national court, the European Commission or a national competition authority, with questions potentially reaching the Court of Justice through Article 267 TFEU. Human-rights litigation would follow a different route because WADA and Federations are not respondent States under the Convention, although domestic proceedings can ultimately lead to Strasbourg review.

5. Conclusions

The Enhanced Games have transformed a long-standing theoretical debate into a concrete problem of sports governance. By organizing and commercializing a competition in which performance enhancement is openly permitted, the project does not merely invite athletes to breach existing anti-doping rules; it constructs a rival regulatory product outside the IOC/WADA-based pyramid. This article questioned whether that competitor can seriously undermine the legitimacy of the anti-doping system and what the possible consequences.

In the end, it appears that the Enhanced Games are unlikely to displace the substantive legitimacy of clean-sport objectives: health, the level playing field and integrity remain capable of justifying restrictive regulation. The most significant challenge concerns institutional legitimacy: WADA, the IOC and International Federations must defend those objectives without relying on disproportionate means and bearing in mind that the right of the main stakeholders in sport – i.e. the athletes – must always be respected and enhanced through a system perceived as just and balanced, not only effective. This issue lies at the heart of the broader debate concerning the very rationale of the

WADA system, which has not always given sufficient prominence to the human rights of athletes.

In this respect, the Enhanced Games may be understood as a stress test capable of bringing to light weaknesses that might otherwise remain less visible within the anti-doping framework. Rather than merely challenging the legitimacy of the system, they provide an opportunity to identify existing gaps, reassess its underlying assumptions, and consider areas in which the protection of athletes' rights could be further strengthened, in order to increase WADA's recognition.

For WADA, the IOC and International Federations, the most credible response is therefore institutional rather than purely punitive. The Initial Human Rights Impact Assessment points toward systematic human-rights due diligence, meaningful athlete engagement, accessible remedies, greater transparency and independent oversight. A system perceived as inaccessible or excessively punitive may remain enforceable while gradually losing authority among those it regulates.

Competition law adds a second discipline. Sports governing bodies may protect the identity and integrity of recognized competitions, but restrictions aimed at a rival organizer must be based on objective and reviewable criteria rather than uncontrolled gatekeeping. The Enhanced Games therefore operate as a genuine stress test: not a demonstration that anti-doping has lost its substantive rationale, but an opportunity to examine whether governance practices are fair, participatory, evidence-based and proportionate.

The long-term legitimacy of the international anti-doping system will depend on its ability to preserve clean-sport objectives while demonstrating that the rights and economic position of athletes are treated as part of the system's legitimacy, not as obstacles to it.