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NAMING, SHAMING AND DATA PROTECTION ON THE PODIUM: THE COURT OF JUSTICE'S JUDGMENT IN *NADA AUSTRIA* (C-474/24) ON THE ONLINE PUBLICATION OF ANTI-DOPING SANCTIONS

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ABSTRACT: On 14 July 2026 the Grand Chamber of the Court of Justice delivered its judgment in NADA Austria and Others*, clarifying, for the first time in the context of organised sport, the interplay between the General Data Protection Regulation ("GDPR") and the online publication of the names of athletes sanctioned for anti-doping rule violations. The Court held that : (i) such publication falls within the material scope of EU data protection law, (ii) the information published is not, as a rule, "data concerning health", (iii) a general statutory duty to publish may be compatible with the principle of proportionality provided an individual balancing exercise remains available outside the situations expressly excluded by national law, (iv) anti-doping offences are not "offences" within the meaning of Article 10 of the GDPR, and (v) a complaint under Article 77 may be lodged pre-emptively where publication is imminent. This article sets out the factual and legal background to the reference, analyses each of the Court's answers. It then offers a critical assessment of their implications for the future design of anti-doping publication regimes across the Member States, read against the backdrop of the markedly divergent Opinions previously delivered by Advocates General Ćapeta and Spielmann.*

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Il 14 luglio 2026 la Grande Sezione della Corte di giustizia ha pronunciato la sentenza NADA Austria e altri*, chiarendo, per la prima volta nel contesto dello sport organizzato, il rapporto tra il Regolamento generale sulla protezione dei dati ("Regolamento") e la pubblicazione online dei nominativi degli atleti sanzionati per violazioni delle norme antidoping. La Corte ha stabilito che: (i) tale pubblicazione rientra nell'ambito di applicazione materiale del diritto dell'Unione in materia di protezione dei dati, (ii) le informazioni pubblicate non costituiscono, di regola, "dati relativi alla salute", (iii) un obbligo legale generale di pubblicazione può essere compatibile con il principio di proporzionalità purché resti disponibile un bilanciamento individuale al di fuori delle ipotesi espressamente escluse dalla legge nazionale, (iv) le infrazioni antidoping non costituiscono "reati" ai sensi dell'articolo 10 del Regolamento, e (v) un reclamo ai sensi dell'articolo 77 può essere proposto in via preventiva qualora la pubblicazione sia imminente. Il presente contributo espone il contesto fattuale e giuridico del rinvio pregiudiziale, analizza ciascuna delle risposte fornite dalla Corte e offre una valutazione critica delle loro implicazioni per la futura configurazione dei regimi di pubblicazione antidoping negli Stati membri, alla luce delle marcate divergenze tra le Conclusioni presentate dagli Avvocati Generali Ćapeta e Spielmann.*

Keywords: *General Data Protection Regulation – Anti-doping – Data concerning health – Ciminal offences – Proportionality – Data minimisation – Right to erasure.*

Regolamento generale sulla protezione dei dati – Antidoping – Dati relativi alla salute – Reati – Proporzionalità – Minimizzazione dei dati – Diritto alla cancellazione,

1. Introduction

The tension between the public interest in transparent anti-doping enforcement and the individual athlete's right to the protection of personal data is not new, but it had, until recently, been examined by the Court of Justice only through the narrow lens of admissibility.[1]

In *NADA Austria and Others*[2] delivered by the Grand Chamber on 14 July 2026, the Court finally addressed the substance of the question: may a Member State require its anti-doping authorities to publish, on the internet and without differentiation, the names of sanctioned athletes, the sporting discipline concerned, the nature of the infringement, and the duration of the resulting ban?

The judgment answers that question, and four related ones, by weaving together the material scope of the General Data Protection Regulation[3] (the "GDPR"), the special categories of data under Article 9, the enhanced regime for criminal data under Article 10, the general principles of lawfulness and data minimisation under Articles 5 and 6, and the right to lodge a preventive complaint under Article 77.

The questions answered by the Grand Chamber are not new to this debate. They mirror, point for point, the questions already canvassed, with strikingly opposite results, in the two Opinions delivered in the parallel NADA litigation: that of Advocate General Ćapeta in 2023, in the reference for a preliminary ruling that was ultimately declared inadmissible (case C-115/22),[4] and that of Advocate General Spielmann in 2025, in the reference giving rise to the present judgment.[5]

Reading the Court's answers against that earlier comparative debate is instructive, since the judgment can fairly be described neither as a wholesale endorsement of one Opinion nor as a rejection of the other, but as a considered middle course between them.[6]

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[1] Court of Justice, (Grand Chamber), judgment of 7 May 2024, *NADA and Others*, C-115/22, ECLI:EU:C:2024:384, paragraph 39 et seq. For a broader account of the tension between anti-doping regulation and athletes' fundamental rights, including privacy and data protection, see B. van der Sloot, M. Paun, R. Leenes, *Athletes' Human Rights and the Fight Against Doping: A Study of the European Legal Framework,* ASSER International Sports Law Series, T.M.C. Asser Press, The Hague, 2020.

[2] Judgment of 14 July 2026, *NADA Austria and Others*, C-474/24, ECLI:EU:C:2026:579.

[3] 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), OJ L 119, 4.5.2016, and corrigendum OJ L 127, 23.5.2018 ('the GDPR').

[4] Opinion of Advocate General Ćapeta delivered on 14 September 2023, *NADA and Others*, C-115/22, ECLI:EU:C:2023:676.

[5] Opinion of Advocate General Spielmann delivered on 25 September 2025, *NADA Austria and Others*, C-474/24, ECLI:EU:C:2025:733.

[6] S. Bastianon, Anti-Doping Sanctions and Data Protection Under EU Law – A Comparison of the Advocates General's Opinions in the NADA Cases, RDES, Vol. XXI, 2025, 105. See also

This article first sets out the Austrian anti-doping publication regime and the factual background to the dispute, before restating the seven questions referred by the *Bundesverwaltungsgericht* (Federal Administrative Court, Austria). It then analyses the Court's reasoning question by question, situating each answer against the corresponding passages of the two Advocates General's Opinions, before turning to a critical commentary on the significance of the judgment for the design of anti-doping transparency regimes across the European Union, including its indirect implications for WADA and the global anti-doping architecture, and closing with some concluding remarks.

2. *Factual and Procedural Background*

2.1 *The Austrian Anti-Doping Publication Regime*

The *Anti-Doping-Bundesgesetz* 2021 (the "ADBG")[7] implements, at national level, the World Anti-Doping Code (the "WADC"),[8] the foundational instrument of the worldwide fight against doping arising out of the Copenhagen Declaration of 2003[9] and the UNESCO International Convention against Doping in Sport of 2005.[10]

Under the ADBG, decisions of the *Österreichische Anti-Doping Rechtskommission* (Austrian Anti-Doping Legal Committee - the "ÖADR") and of the *Unabhängige Schiedskommission* (Independent Arbitration Committee - the "USK") banning an athlete from competition must, as a rule, be disclosed to the public, together with the name of the athlete, the sporting discipline practised, the duration of the ban and the reasons for it, "*without allowing conclusions to be drawn*" regarding the athlete's health data.[11]

The Nationale *Anti-Doping Agentur Austria GmbH* (the "NADA") publishes this information in tabular form on its website, and the ÖADR separately publishes press releases containing the same information, together, in practice, with the name of the prohibited substance found.

The publication duty is subject to three exceptions, namely: recreational athletes, particularly vulnerable persons, and whistle-blowers who have significantly contributed to the detection of an infringement.[12]

M. Herrlein, *Two Advocates General, Two Different Answers: What the Conflicting NADA Austria Opinions Mean for Anti-Doping Transparency*, LawInSport, 3 November 2025.

[7] Anti-Doping-Bundesgesetz 2021, BGBl. I, 152/2020 ('the ADBG'), Paragraph 1(1).

[8] World Anti-Doping Code (2021 version), Article 14.3.2.

[9] Copenhagen Declaration on Anti-Doping in Sport, 5 March 2003, available at *https://www.wada-ama.org/sites/default/files/resources/files/WADA_Copenhagen_Declaration_EN.pdf.*

[10] United Nations International Convention against Doping in Sport, Paris, 19 October 2005, in force on 1 February 2007, available at *https://www.unesco.org/en/legal-affairs/international-convention-against-doping-sport.*

[11] ADBG, Paragraph 5(6)(4).

[12] Ibid., Paragraph 21(3).

Even within the exception for recreational athletes, disclosure remains mandatory where the infringement concerns possession, trafficking or administration of a prohibited substance, for reasons of public health.[13]

No individualised weighing of interests is otherwise foreseen. The only balancing exercise is that carried out *ex ante* and in the abstract by the Austrian legislature, through its prior definition of the categories of persons and information concerned.

2.2 The Dispute in the Main Proceedings and The Questions Referred for a Preliminary Ruling

The applicants, four athletes referred to as AR, YT, DI and RN, were banned from competition: some of them for a fixed period and some others for life, by decisions of the ÖADR or the USK.

Following publication, or imminent publication in the case of YT, they asked NADA and the ÖADR to remove the references to their names and sporting disciplines from the relevant websites.

Their requests, and the subsequent complaints lodged with the Austrian Data Protection Authority under Article 77 GDPR seeking enforcement of the right to erasure under Article 17 GDPR, were rejected. The complaints of AR, DI and RN were dismissed as unfounded, on the basis that publication was necessary to comply with a legal obligation. YT's complaint, by contrast, was dismissed for lack of a legally protected interest, since her data had not yet been published.

The applicants challenged that decision before the Austrian Federal Administrative Court, arguing that the information at issue constituted both "data concerning health" within the meaning of Article 9 GDPR and data "relating to criminal convictions and offences" within the meaning of Article 10 GDPR, and that the undifferentiated publication regime was neither necessary nor proportionate.

The referring court had previously stayed proceedings pending a parallel reference from the USK; the above-mentioned reference, in which Advocate General Ćapeta had already delivered a substantive Opinion on the merits was, however, declared inadmissible because the USK could not be classified as a "court or tribunal" for the purposes of Article 267 TFEU. [14] Once its own proceedings resumed, the Austrian Federal Administrative Court referred seven questions to the Court of Justice. [15] The questions, considerably condensed, asked:

(i) whether the publication at issue falls within the scope of EU law and hence of the GDPR, having regard to the exclusion, under Article 2(2)(a), of activities falling outside that scope;

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[13] Ibid., Paragraph 23(14).

[14] *NADA and Others,* C-115/22, ECLI:EU:C:2024:384.

[15] *NADA Austria and Others*, C-474/24, paragraph 39.

(ii) whether information that an athlete has committed a specific anti-doping infringement constitutes 'data concerning health' under Article 9;

(iii) whether the GDPR precludes national legislation providing for undifferentiated publication, in the light of the principles of lawfulness, fairness and data minimisation under Article 5(1)(a) and (c) and the requirement of proportionality under the second subparagraph of Article 6(3);

(iv) whether publication must always be preceded by an individual balancing of interests;

(v) whether such information constitutes data 'relating to criminal convictions and offences' under Article 10;

(vi), asked only in the event of an affirmative answer to, whether the relevant supervisory activity must be subject to judicial review; and

(vii) whether a complaint under Article 77 concerning an alleged infringement of the right to erasure is admissible where the data concerned had not yet been processed at the time the complaint was lodged, but publication was imminent.

3. *The Judgment of the Court*

3.1 *Material Scope: the 'National Security' Exception Does Not Extend to Anti-Doping Activity (First Question)*

Reformulating the first question, the Court identified the processing at issue as the publication of the athletes' names, the sporting discipline practised, the anti-doping infringement committed, the sanction imposed and the start and end dates of that sanction.[16]

It held, uncontroversially, that this information constitutes personal data within the meaning of Article 4(1) GDPR and that its publication on the websites of NADA and the ÖADR constitutes "processing" within the meaning of Article 4(2), such that it falls within the very broad material scope conferred on the GDPR by Article 2(1).[17]

The only controversial issue was whether that processing was nonetheless excluded from the scope of EU law altogether by Article 2(2)(a) of the GDPR. That provision states that the GDPR does not apply to the processing of personal data "in the course of an activity which falls outside the scope of Union law".

The Court reaffirmed its settled case law that this exception, like the other exceptions exhaustively listed in Article 2(2), must be interpreted strictly,[18]

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[16] Ibid., paragraph 41.

[17] Ibid., paragraphs 42 and 43, citing judgment of 22 June 2021, *Latvijas Republikas Saeima* (Penalty points), C-439/19, EU:C:2021:504, paragraph 61.

[18] Ibid., paragraph 46, citing *Latvijas Republikas Saeima* (Penalty points), C-439/19, paragraph 62 and the case-law cited, and judgment of 16 January 2024, *Österreichische Datenschutzbehörde*, C-33/22, EU:C:2024:46, paragraph 37. See also H. Kranenborg, *'Article 2 Material Scope'*, in C. Kuner, L.A. Bygrave, C. Docksey (eds.), *The EU General Data Protection Regulation (GDPR): A Commentary*, Oxford University Press, 2020, 60-71.

and is designed solely to exclude from the GDPR's scope the processing of personal data carried out by State authorities in the course of an activity intended to safeguard national security or an activity that can be classified in the same category.[19] On that basis, and as the Advocate General Spielmann had already concluded in his Opinion, the Court found that the publication at issue does not constitute processing falling within that exception.[20]

NADA had argued, in essence, that anti-doping policy remains a matter for the Member States under the division of competences, notwithstanding the Union's merely supporting competence in sport under Article 165 TFEU, and that sport is in any event a non-economic activity.

Following the Advocate General Spielmann,[21] the Court rejected both arguments.

First, the fact that processing is carried out in the course of an activity falling within Member State competence does not, for that reason alone, remove that processing from the scope of the GDPR pursuant to Article 2(2)(a). For that provision to apply, the activity must be intended to safeguard national security or be capable of being classified in the same category.[22]

Second, the allegedly non-economic character of sporting activity does not bring anti-doping enforcement any closer to that category either.[23]

The Court found further confirmation of this reading in recital 112 of the GDPR, which expressly envisages, within the Chapter V regime on international data transfers, cross-border data exchange required and necessary for important reasons of public interest, including "to reduce and/or eliminate doping in sport".[24] On that basis, it ruled that the disputed processing comes within the scope of EU law and, accordingly, within the scope of the GDPR.[25]

This part of the judgment is unsurprising, but it is doctrinally significant: it forecloses any suggestion that the internal governance of sport enjoys a data-protection carve-out akin to that reserved for core State functions such as national security or defence.

This outcome was far from a foregone conclusion. Advocate General Spielmann's broad reading of Article 2(2)(a) (that the GDPR's own legal basis in Article 16 TFEU, read with recital 112, precludes treating anti-doping enforcement as an activity outside the scope of Union law, and that a link with the internal market cannot sensibly be made to depend on whether the athlete concerned is

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[19] Ibid., paragraph 47, citing *Latvijas Republikas Saeima* (Penalty points), C-439/19, paragraph 66, and Österreichische Datenschutzbehörde, C-33/22, paragraph 37.

[20] Ibid., paragraphs 48 and 49, referring to point 45 of the Opinion of Advocate General Spielmann.

[21] Ibid., paragraph 50, referring to points 46 to 59 of the Opinion of Advocate General Spielmann.

[22] Ibid., paragraph 51, citing judgment of 30 April 2025, *Inspektorat kam Visshia sadeben savet*, C-313/23, C-316/23 and C-332/23, ECLI:EU:C:2025:303, paragraph 104.

[23] Ibid., paragraph 52.

[24] Ibid., paragraph 53.

[25] Ibid., paragraph 54 and point 1 of the operative part.

professional or merely amateur[26]) stands in direct opposition to the view previously defended by Advocate General Ćapeta in the above-mentioned aborted case C-115/22.

The latter had reasoned that anti-doping rules "primarily regulate sport as sport", pursuing social and educational rather than economic functions, and that bringing such rules within the scope of the GDPR would improperly extend EU competence into a field, sport, where the Treaties confine the Union to a merely supporting role.[27]

The Grand Chamber essentially adopted the reasoning Advocate General Spielmann had proposed in his Opinion.[28] In doing so, it resolved, in favour of the broader reading, a genuine methodological disagreement between the two Advocates General as to how the "national security" exception in Article 2(2)(a) interacts with matters of shared or merely supporting Union competence.

3.2 Anti-Doping Sanctions and the Concept of 'Data Concerning Health' (Second Question)

Answering the second question, the Court restated its broad understanding of "data concerning health" developed in *Lindenapotheke* case.[29]

First, it stated that the concept, defined in Article 4(15) GDPR and elaborated in recital 35, covers all personal data revealing information relating to the past, current or future physical or mental health status of a natural person, including data concerning the provision of healthcare services.[30]

Then, having regard to the GDPR's objective of ensuring a high level of protection of fundamental rights, it considered that the notion of "data concerning health" must be interpreted broadly[31] and it cannot exclude data liable only indirectly to reveal sensitive information, on pain of undermining the effectiveness of the enhanced protection regime.[32] On this basis, it concluded that it is accordingly sufficient that personal data are capable of revealing information about health status by means of an intellectual operation involving collation or deduction.[33]

Applying that test, the Court noted that the ADBG itself requires disclosure of bans and suspensions "*without allowing conclusions to be drawn regarding the data subject's data concerning health*",[34] but that

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[26] Opinion of Advocate General Spielmann, paragraphs 40, 44, 52 and 57-59.
[27] Opinion of Advocate General Ćapeta, paragraphs 87 to 90.
[28] *NADA Austria and Others*, C-474/24, paragraph 50, referring to points 46 to 59 of the Opinion of Advocate General Spielmann.
[29] *Lindenapotheke*, C-21/23, ECLI:EU:C:2024:846.
[30] *NADA Austria and Others*, C-474/24, paragraph 57, citing judgment of 4 October 2024, *Lindenapotheke*, C-21/23, ECLI:EU:C:2024:846, paragraph 76.
[31] Ibid., paragraph 58, citing *Lindenapotheke*, C-21/23, paragraph 81 and the case-law cited.
[32] Ibid., paragraph 59.
[33] Ibid., paragraph 60.
[34] Ibid., paragraph 61, referring to paragraph 5(6), paragraph 21(3) and paragraph 23(14) of the ADBG.

the ÖADR, unlike NADA, in fact indicates in its press releases the name of the prohibited substance in question.[35]

Confronting the referring court's doubt on this point directly,[36] the Court distinguished two situations. Where a publication makes no reference to the substance or method concerned, nothing in that publication allows a link to be drawn, even in principle, between the finding of an anti-doping infringement and information relating to the data subject's (that is, the athlete's) health status;[37] and the mere reference to the name of the substance present in the athlete's body is, as such, generally insufficient to reveal information relating to health status, including future health status.[38]

It cannot be ruled out, however, that the same reference, combined with other available information, may indirectly reveal such information by means of an intellectual operation involving collation or deduction,[39] in particular where the athlete has taken a substance or used a method prohibited on account of a specific health condition without having applied for a therapeutic-use exemption under Paragraph 12 of the ADBG.[40]

The Court expressly left it to the referring court to verify whether the information at issue in fact constitutes "data concerning health" within Article 4(15) and Article 9(1) GDPR, read with recital 35. That assessment must take account of all the circumstances attending the ÖADR's publications.[41]

Were the referring court to reach that conclusion, publication would in principle be prohibited, subject to the derogations under Article 9(2) GDPR (which, as exceptions to a general prohibition, must be interpreted strictly[42]) in particular Article 9(2)(g), concerning processing necessary for reasons of substantial public interest on a basis that is proportionate, respects the essence of the right to data protection and provides suitable and specific safeguards, a question again remitted to the referring court.[43]

The Court's formal answer accordingly draws the same two-part distinction: the information that a person has committed a specific anti-doping infringement is not, in principle, "data concerning health"; it is, however, where it names the prohibited substance or method and that reference, combined with other information, is capable of indirectly revealing information on the person's physical or mental health status.[44]

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[35] Ibid., paragraph 62.
[36] Ibid., paragraph 63.
[37] Ibid., paragraph 65.
[38] Ibid., paragraph 66.
[39] Ibid., paragraph 67.
[40] Ibid., paragraph 68, referring to paragraph 12 of the ADBG.
[41] Ibid., paragraph 69.
[42] Ibid., paragraph 70, citing judgment of 4 July 2023, *Meta Platforms and Others* (General terms of use of a social network), C-252/21, EU:C:2023:537, paragraphs 68 and 76.
[43] Ibid., paragraphs 71 and 72.
[44] Ibid., paragraph 73 and point 2 of the operative part.

This calibrated, substance-dependent test essentially reflects the position of Advocate General Spielmann.

In fact, he had observed that anti-doping testing takes place in a quasi-medical context, involving the analysis of bodily samples by accredited professionals. A finding of infringement may therefore be linked to "information derived from the testing or examination of a body part or bodily substance" within the meaning of recital 35. At the same time, he accepted that the mere mention of a substance's name may be 'too succinct' and its link with health status "too indirect, or even too hypothetical" to qualify as health data, unless combined with other available information.[45]

Advocate General Ćapeta, by contrast, had taken a more formalistic approach. She argued that a finding that an athlete consumed or possessed a prohibited substance "says nothing about his/her physical or mental health status". She compared this to alcohol consumption, which does not, in itself, indicate whether a person suffers from alcohol dependency.[46]

The Court's fact-sensitive, case-by-case formula, set out at paragraphs 64 to 69 of the judgment, tracks Advocate General Spielmann's approach far more closely than Advocate General Ćapeta's categorical exclusion. It stops short, however, of treating substance-naming as automatically sufficient, leaving the ultimate qualification to the referring court on the facts of each case.[47]

3.3 *Proportionality, Data Minimisation and the (Limited) Need for Individual Balancing (Third and Fourth Questions)*

The core of the judgment lies in the Court's treatment of the third and fourth questions, examined together and reformulated as asking whether Article 5(1)(a) and (c) and the second subparagraph of Article 6(3) GDPR preclude national legislation imposing an obligation to publish sanctioned athletes' personal data, and whether that obligation must in every case be preceded by an individual balancing of interests.[48]

The judges began from the settled premise that all processing must satisfy both a principle relating to processing under Article 5 and a lawful basis under Article 6(1),[49] that Article 5(1)(a) (lawfulness, fairness and transparency) and Article 5(1)(c) (data minimisation) give expression, in that regard, to the principle of proportionality,[50] and that Article 6(1) sets out an exhaustive and restrictive list of the situations in which processing may be regarded as lawful.[51]

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[45] Opinion of Advocate General Spielmann, paragraphs 74–75, 79 and 82.
[46] Opinion of Advocate General Ćapeta, paragraphs 96 to 99 and 102.
[47] *NADA Austria and Others*, C-474/24, paragraphs 64 to 69.
[48] Ibid., paragraphs 74 and 75.
[49] Ibid., paragraph 76, citing *Latvijas Republikas Saeima (Penalty points),* C-439/19, paragraph 96, ECLI:EU:C:2021:504.
[50] Ibid., paragraph 77.
[51] Ibid., paragraph 78.

The disputed processing follows directly from paragraph 5(6)(4) and paragraph 21(3) of the ADBG, as the Advocate General had observed.[52]

On that basis, the Court situated it within Article 6(1)(c) (compliance with a legal obligation) and, in the alternative, Article 6(1)(e) (performance of a task in the public interest, consistently with the objectives of EU sports policy under the last indent of Article 165(2) TFEU).[53]

Processing on either basis must, under Article 6(3), pursue an objective of public interest and be proportionate to the legitimate aim pursued. This requirement gives concrete expression, in the data-protection field, to Article 52(1) of the Charter,[54] and is subject to the ordinary conditions governing limitations on the qualified rights protected by Articles 7 and 8 of the Charter.[55]

Assessing compatibility with the GDPR in the light of those principles,[56] the Court applied a four-point methodology drawn from its corporate-transparency and public-register case law:

(i) whether the measure pursues an objective of general interest;

(ii) whether it is appropriate to that objective;

(iii) whether the resulting interference is limited to what is strictly necessary, in that the objective could not be achieved as effectively by less restrictive means; and

(iv) whether the interference is, overall, proportionate to the objective, which requires balancing the importance of the objective against the seriousness of the interference.[57]

On the first point, the Court found that combating doping in order to safeguard the fairness, integrity and objectivity of competitive sport, ensure equal opportunities and protect athletes' health pursues an objective of general interest, consistently with its own competition-law case law and with the objectives of Article 165(2) TFEU.[58]

On the second point, the Court considered the publication appropriate.

It deters infringement by making violations and their consequences known to the public and to potential sponsors, and it helps prevent circumvention of bans by informing competition organisers and prospective employers,[59] a rationale that echoes, almost point for point, Advocate General Ćapeta's own reasoning that personalised, ongoing disclosure carries a stronger deterrent effect than anonymised publication, and that identifying suspended

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[52] Ibid., paragraph 79, referring to point 139 of the Opinion of Advocate General Spielmann.

[53] Ibid., paragraph 80.

[54] Ibid., paragraph 81, citing judgment of 1 August 2022, *Vyriausioji tarnybinës etikos komisija*, C-184/20, ECLI:EU:C:2022:601, paragraph 69.

[55] Ibid., paragraph 82, citing *Vyriausioji tarnybinës etikos komisija*, C-184/20, paragraph 70 and the case-law cited.

[56] Ibid., paragraph 83.

[57] Ibid., paragraph 84, citing judgment of 22 November 2022, *Luxembourg Business Registers*, C-37/20 and C-601/20, ECLI:EU:C:2022:912, paragraph 66.

[58] Ibid., paragraph 85, citing judgment of 18 July 2006, *Meca-Medina and Majcen v Commission*, C-519/04 P, ECLI:EU:C:2006:492, paragraphs 43 to 45.

[59] Ibid., paragraphs 86 and 87.

athletes to sponsors and clubs is 'both appropriate and necessary' to prevent inadvertent breaches of the ban.[60]

On the third point, the Court found the measure necessary, reasoning that publication strengthens the effectiveness of the sanctions themselves.[61] It recalled that the necessity requirement, per recital 39, is not met where the objective could reasonably be achieved just as effectively by less restrictive means.[62] However that anonymised publication, or publication confined to those responsible for enforcing bans, does not appear capable of achieving the deterrent and preventive objective as effectively as the disputed regime.

Thus, according to the Court, disclosure of the athlete's identity beyond a narrow circle of enforcers both enhances deterrence and helps prevent circumvention of the sanction, without going beyond what is necessary to inform current or potential employers and sponsors.[63]

This finding again sides with Advocate General Ćapeta's pragmatic view that restricting disclosure to sponsors and sports organisations alone is unworkable in practice: as she notes, it is impossible to know in advance whom to inform, since a new stakeholder (for instance, the owner of a newly established gym) might emerge at any moment.[64]

It also aligns with her characterisation of online publication as, in modern society, the only means by which such a disclosure obligation can be fulfilled. She draws an analogy to the obsolescence of door-to-door announcements following the invention of the printing press: just as no one would ask a person to go from door to door announcing news items after the invention of the printing press by Gutenberg, the internet has rendered print publication similarly inadequate for reaching the general public.[65]

It is the fourth point, proportionality *stricto sensu*, that carries the judgment's principal doctrinal innovation.

The Court assessed the seriousness of the interference by reference to the sensitivity of the data, the number of persons able to access it, and the manner of access.[66]

It found that even NADA's publication, which does not name the substance concerned, entails a serious interference with the rights to private life and data protection under Articles 7 and 8 of the Charter. Such publication is liable to provoke social disapproval and the stigmatisation of the data subject; it is freely accessible

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[60] Opinion of Advocate General Ćapeta, paragraphs 148 and 150.
[61] *NADA Austria and Others*, C-474/24, paragraph 88, citing *Meca-Medina and Majcen v Commission*, C-519/04 P, paragraph 44.
[62] Ibid., paragraph 89, citing recital 39 GDPR and *Latvijas Republikas Saeima* (Penalty points), C-439/19, paragraph 110.
[63] Ibid., paragraphs 90 to 92.
[64] Opinion of Advocate General Ćapeta, paragraphs 161.
[65] Ibid., paragraphs 169-170.
[66] *NADA Austria and Others*, C-474/24, paragraphs 93 and 94, citing *Vyriausioji tarnybinės etikos komisija*, C-184/20, paragraphs 98 and 99.

to a potentially unlimited number of persons, and, once published, the information may be reproduced on other websites and thus remain accessible even after erasure from the original source.[67]

This is precisely the concern Advocate General Spielmann had labelled a risk of "digital stigmatisation". He warned that the permanence of internet publication can render even accurate and originally lawful information disproportionate simply through the passage of time, expressly aligning this concern with the Court's "right to be forgotten" case law.[68]

Against this background, the Court confronted the central question referred by the Austrian judge: whether the GDPR requires an individual balancing exercise in every case, or whether it suffices that the legislature perform that balancing in the abstract, through pre-defined categories and exceptions.[69]

The Court observed that the Austrian legislature has already engaged in precisely such an abstract balancing exercise, by pre-defining the situations in which publication is required and laying down certain exceptions to that publication (recreational athletes, particularly vulnerable persons, and whistle-blowers).[70]

Nonetheless, given the seriousness of the interference, the Court held that it cannot be ruled out that, outside those pre-defined situations, specific circumstances may render publication incompatible with the requirement of a proper balance between the interests involved.[71]

Its answer therefore charts a genuine middle course: Article 5(1)(a) and (c) and the second subparagraph of Article 6(3) do not require an individual balancing exercise in every case; but where the situations pre-defined by national legislation do not, in themselves, ensure observance of the principle of proportionality in each individual case, controllers must take account of the circumstances of the case and carry out such an individual balancing exercise before publishing the data.[72] That exercise, the Court added, must take account of the seriousness of the infringement and of the data subject's status, in particular whether he or she is a high-profile athlete enjoying national or international renown, since "high-level athletes who are well-known have a special responsibility".[73]

Neither Advocate General's position is adopted wholesale here.

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[67] Ibid., paragraph 96.

[68] Opinion of Advocate General Spielmann, paragraphs 149–152 and 158; see also, on the Court's 'right to be forgotten' case law, judgment of 13 May 2014, *Google Spain SL and Google Inc. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*, C-131/12, ECLI:EU:C:2014:317, and judgment of 24 September 2019, *GC and Others v CNIL*, C-136/17, ECLI:EU:C:2019:773.

[69] *NADA Austria and Others*, C-474/24, paragraphs 97 to 99.

[70] Ibid., paragraph 100.

[71] Ibid., paragraph 101.

[72] Ibid., paragraph 102.

[73] Ibid., paragraph 103.

Advocate General Ćapeta had firmly rejected any residual role for case-by-case review once the legislature has itself performed the proportionality exercise. Her reasoning rested on two grounds: democratic legitimacy ("it is precisely the task of the legislature to strike the appropriate balance between conflicting rights and interests", leaving that exercise to an unelected controller being, in her view, 'a less democratic solution'), and a concern that discretionary, case-specific decisions by anti-doping bodies would risk 'abuse and corruption' and unequal treatment among comparably-placed athletes.[74]

Advocate General Spielmann, conversely, had concluded that Articles 5 and 6 GDPR, read together with the accountability principle, do not preclude, and may in some circumstances require, a case-by-case balancing exercise by the controller notwithstanding a general statutory publication duty.[75]

The Court's solution accepts Advocate General Ćapeta's premise that abstract, legislatively pre-defined categories are in principle a legitimate and sufficient method of balancing. At the same time, it grafts onto that premise, in substance, Advocate General Spielmann's insistence that such abstraction cannot be treated as complete or self-executing.

The judges of Luxembourg added two further, more concrete, constraints on proportionality which likewise operationalise Advocate General Spielmann's concerns about the *temporal* dimension of online publication rather than its *existence* as such, a distinction he had been careful to draw, aligning himself with the Internet as a legitimate means of public disclosure while objecting to its indefinite duration.[76]

First, drawing on its consumer-insolvency case law concerning credit registers, the Court held that the longer the publication period, the greater its impact on the data subject's interests and the more demanding the proportionality requirement;[77] accordingly, publication for a period exceeding that during which the sanction applies would not be proportionate.[78]

Second, where the athlete would in any event, in the course of that period, reach an age at which he or she could no longer pursue the sporting activity in question, a publication period manifestly extending beyond that age would likewise, in principle, be disproportionate.[79]

The Court's formal answer confirms that the ADBG-type regime is not, as such, precluded. Controllers must, however, retain the possibility, outside the statutory exceptions and prior to publication, of carrying out an individual balancing exercise consistent with the GDPR.[80]

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[74] Opinion of AG Ćapeta, paragraphs 137, 139 to 141.
[75] Opinion of AG Spielmann, paragraphs 172, 175 to 178.
[76] Ibid., paragraphs 148 to 152 and 158.
[77] *NADA Austria and Others*, C-474/24, paragraph 104, citing judgment of 7 December 2023, *SCHUFA Holding* (Discharge from remaining debts), C-26/22 and C-64/22, EU:C:2023:958, paragraph 95.
[78] Ibid., paragraph 105.
[79] Ibid., paragraph 106.
[80] Ibid., paragraph 107 and point 3 of the operative part.

3.4 Anti-Doping Offences Fall Outside Article 10 GDPR (Fifth and Sixth Questions)

The fifth question asked whether anti-doping infringements and their sanctions (which, under Austrian law, may include revocation of titles, forfeiture of prize money, and multi-year or lifetime bans, with the further consequence, under Paragraph 24(4) of the ADBG, that sports organisations may not employ a banned person[81]) amount to "personal data relating to criminal convictions and offences" within the meaning of Article 10 GDPR.

The Court recalled that Article 10 is intended to afford enhanced protection against processing which, owing to the particular sensitivity of the data concerned, is liable to constitute a particularly serious interference with the rights protected by Articles 7 and 8 of the Charter.[82]

The enhanced protection is confined exclusively to the criminal field, the EU legislature having deliberately omitted the adjective 'administrative' from the text of Article 10.[83]

Finally, the concept of "criminal offence" requires an autonomous and uniform interpretation across the Union. Accordingly, its classification under national law cannot be conclusive, since such classifications may vary from one Member State to another.[84]

Applying those principles, the Court noted, first, that anti-doping offences and sanctions are directed only at a defined group, athletes, and pursue, the function of ensuring that members of that group comply with rules specific to it.[85]

Drawing on the Strasbourg case law on the autonomous concept of a "criminal charge", it observed that a rule addressed to citizens generally points towards criminal classification,[86] whereas the European Court of Human Rights has treated disciplinary proceedings before professional bodies affecting the right to practise an occupation as involving "civil" rather than criminal rights.[87]

Unlike the generally applicable road-traffic penalty-points regime at issue in *Latvijas Republikas Saeima*, the national legislation here applies only to a group covered by a body of specific rules.[88]

The Court further observed that anti-doping offences and sanctions serve not only to protect society and punish the person concerned, but also to preserve

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[81] Ibid., paragraph 109, referring to Paragraph 24(4) of the ADBG.
[82] Ibid., paragraph 112, citing *Latvijas Republikas Saeima (Penalty points),* C-439/19, paragraph 74 and the case-law cited.
[83] Ibid., paragraph 113, citing *Latvijas Republikas Saeima (Penalty points),* C-439/19, paragraphs 77 and 78.
[84] Ibid., paragraph 114.
[85] Ibid., paragraph 115.
[86] Ibid., paragraph 116, citing ECtHR, judgment of 21 February 1984, *Öztürk v. Germany,* CE:ECHR:1984:0221JUD000854479, paragraph 53.
[87] Ibid., paragraph 116, citing ECtHR, judgment of 2 October 2018, *Mutu and Pechstein v. Switzerland,* CE:ECHR:2018:1002JUD004057510, paragraph 58.
[88] Ibid., paragraph 117, contrasting *Latvijas Republikas Saeima (Penalty points),* C-439/19.

the integrity of sporting competitions and the reputation of the discipline in question, purposes distinct from those of ordinary criminal law.[89]

On this basis, it concluded, and formally answered, that anti-doping offences such as those at issue are not covered by the concept of "offences" in Article 10 GDPR, irrespective of their classification under national law.[90] Since the fifth question was answered in the negative, the sixth question, concerning judicial review of supervisory activity under Article 10, did not require an answer.[91]

It should be noted that this precise question, the applicability of Article 10 GDPR to anti-doping sanctions, was not among those addressed in comparable depth by either Advocate General Ćapeta or Advocate General Spielmann in the earlier comparative literature on the two Opinions, since the point had not been framed in equivalent terms in the aborted C-115/22 reference. The Court's analysis here is accordingly closer to an original construction on a genuinely open question than a choice between two previously staked-out positions.

3.5 Pre-emptive Complaints under Article 77 GDPR (Seventh Question)

The seventh question concerned YT's position: her complaint, alleging an infringement of the right to erasure under Article 17, had been rejected for lack of a legally protected interest on the ground that her data had not yet been published, even though a four-year ban had already been imposed on her by the ÖADR.[92]

Interpreting Article 77 in the light of its wording, context and purpose,[93] the Court noted, first, that the verb "infringes" in Article 77(1) implies that processing must already have taken place, without, however, excluding the possibility of future processing, as the Advocate General had already observed.[94]

Turning to context, it emphasised the breadth of supervisory authorities' duty under Article 57(1)(f) to handle complaints with all due diligence,[95] their extensive investigative powers under Article 58(1) and margin of discretion as to corrective measures under Article 58(2),[96] and, in particular, the power under Article 58(2)(a) to issue warnings where intended processing operations are likely to infringe the Regulation. This last power is expressly preventive in nature.[97]

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[89] Ibid., paragraph 118.

[90] Ibid., paragraphs 119 and 120 and point 4 of the operative part.

[91] Ibid., paragraphs 121 and 122.

[92] Ibid., paragraph 136.

[93] Ibid., paragraph 125, citing judgment of 17 November 1983, Merck, 292/82, EU:C:1983:335, paragraph 12, and judgment of 9 January 2025, *Österreichische Datenschutzbehörde (Excessive requests),* C-416/23, EU:C:2025:3, paragraph 24.

[94] Ibid., paragraph 126, referring to point 186 of the Opinion of Advocate General Spielmann.

[95] Ibid., paragraph 127, citing *SCHUFA Holding (Discharge from remaining debts),* C-26/22 and C-64/22, paragraph 56 and the case-law cited.

[96] Ibid., paragraph 128, citing *SCHUFA Holding (Discharge from remaining debts),* C-26/22 and C-64/22, paragraphs 57 and 68.

[97] Ibid., paragraph 129.

It drew further support from its own case law holding, in the law-enforcement data-protection context of Directive (EU) 2016/680, that an attempt to access personal data may itself already constitute processing.[98] As to purpose, the Court considered that reading Article 77(1) as precluding any complaint prior to actual publication would restrict supervisory authorities' duty to handle complaints.

That reading would be inconsistent with the objectives, recalled in recitals 10 and 11 of the GDPR, of ensuring a high and effective level of protection for data subjects throughout the Union.[99]

The Court accordingly held that a complaint under Article 77 is admissible before the processing has taken place at the time the complaint is lodged, provided that the processing is not purely hypothetical.[100]

Since a complaint seeking erasure presupposes, in principle, that the data have already been processed,[101] the Court characterised YT's complaint, subject to verification by the referring court, as one properly aimed at preventing rather than reversing a publication; so construed, it was admissible, since there were, at the time it was lodged, specific indications that publication was imminent, a conclusion reinforced by the seriousness of the interference such publication would entail.[102]

This holding complements the Court's own emphasis, in relation to the third and fourth questions, on the largely irreversible character of internet publication once it has occurred; read together, the two strands of the judgment form a coherent whole in which prevention, through an early complaint, and containment, through duration - and age-based limits, operate as complementary safeguards against a single underlying harm.

4. *Pre-emptive Complaints under Article 77 GDPR (Seventh Question)*

4.1 *Pre-emptive Complaints under Article 77 GDPR (Seventh Question)*

The judgment should be read against the above-mentioned backdrop of the Court's earlier ruling in *NADA and Others*,[103] in which a parallel reference from the USK was dismissed as inadmissible because that body did not qualify as a 'court or tribunal' under Article 267 TFEU.

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[98] Ibid., paragraph 131, citing Article 3(2) of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016, and judgment of 4 October 2024, *Bezirkshauptmannschaft Landeck* (Attempt to access personal data stored on a mobile telephone), C-548/21, EU:C:2024:830, paragraphs 69 to 77.

[99] Ibid., paragraphs 132 to 134.

[100] Ibid., paragraph 135. See also H. Kranenborg, 'Article 17 Right to Erasure ('Right to Be Forgotten')', in C. Kuner, L.A. Bygrave, C. Docksey (eds.), *The EU General Data Protection Regulation (GDPR): A Commentary*, Oxford University Press, 2020, 475-484.

[101] Ibid., paragraph 137.

[102] Ibid., paragraph 138 and point 5 of the operative part.

[103] Judgment of 7 May 2024, *NADA and Others*, C-115/22, ECLI:EU:C:2024:384.

The two references, arising from the same underlying factual background, produced strikingly different Advocate General opinions on the merits of the balancing exercise required: Advocate General Ćapeta favouring a stricter, more individualised proportionality standard than Advocate General Spielmann ultimately proposed in the present case.

That characterisation, however, understates the extent of the reversal.

On the question of scope, it was in fact Advocate General Ćapeta who took the *narrower* view of the GDPR's applicability. By contrast, it was Advocate General Spielmann who favoured the broader reading later adopted by the Court. Only on the question of case-by-case balancing did the roles run the other way, with AG Spielmann favouring the more individualised, protective standard and AG Ćapeta defending the legislature's exclusive competence to strike the balance in the abstract.[104]

The judgment in C-474/24 now supplies, through a properly admissible reference, the substantive answer that C-115/22 could not, and in doing so resolves, rather than simply follows, a genuine cross-cutting disagreement between the two Opinions.

4.2 A Calibrated, Fact-Dependent Reading of 'Data Concerning Health'

The Court's refusal to treat the bare fact of an anti-doping ban as 'data concerning health' is substantially closer to Advocate General Spielmann's substance-dependent test than to Advocate General Ćapeta's categorical exclusion.

The outcome nonetheless leaves national anti-doping bodies with a delicate, fact-sensitive line to draw: as soon as the name of the prohibited substance is disclosed, which the ÖADR does as a matter of established practice, the analysis shifts to whether that disclosure, combined with other publicly available information, permits an inference as to the athlete's health.

This is likely to generate further litigation, since many prohibited substances (diuretics, glucocorticoids, certain stimulants) are used both for performance enhancement and for the treatment of specific medical conditions, and the boundary between the two will rarely be self-evident from the publication alone.

The judgment is also open to criticism on a more structural point. By formulating the test in terms of an 'intellectual operation of collation or deduction' capable of being performed by an unspecified observer, the Court effectively imports into the sporting context the same open-ended standard it had already developed for pharmacies' online sales platforms in *Lindenapotheke*. In that case, the class of substances at issue (medicinal products) and the class of persons capable of drawing inferences (customers, competitors, the pharmacy's own algorithm) were considerably narrower and more

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[104] S. BASTIANON, *Anti-Doping Sanctions and Data Protection Under EU Law – A Comparison of the Advocates General's Opinions in the NADA Cases*, RDES, Vol. XXI, 2025, 108 to 112, comparing Opinion of Advcate General Ćapeta, paragraphs 87 to 90, with Opinion of Advocate General Spielmann, paragraphs 40 to 60.

homogeneous than the WADA Prohibited List, which spans everything from anabolic steroids to masking diuretics to substances of abuse.

The practical consequence is that the ÖADR, and any comparable body elsewhere in the Union, is left to conduct what is a substance-by-substance risk assessment against the Prohibited List, updated annually by WADA and running to several hundred entries, without any indication from the Court as to which categories of substance are more likely to cross the health-data threshold.

A published list distinguishing, for internal compliance purposes, between substances whose disclosure is essentially always safe (masking agents with no accepted therapeutic use, for instance) and those which are, by their nature, medically ambivalent (glucocorticoids, beta-agonists, certain stimulants prescribed off-label) would have gone some way towards operationalising the Court's test.

As a result, national anti-doping bodies, not the Court, will have to work out this classification in practice. Different Member States may well take different approaches until further case law or EDPB guidance clarifies the point.

The Court seems to treat the classification of a publication as 'health data' as a single, fixed determination: either it is health data or it isn't, decided once and for all.

In practice, the name of a prohibited substance, may or may not support a health-related inference depending on factors beyond the publication itself, such as the athlete has a documented, publicly known medical history or whether the substance in question has a single, well-known non-therapeutic use in the sport concerned.

The judgment does not address whether the qualification is to be assessed *ex ante*, at the moment of publication, or on an ongoing basis as extrinsic facts change. This is a question of obvious practical importance given the durational limits the Court itself imposes later in the judgment, discussed in the following section.

4.3 Proportionality by Design: Abstract Categories, Concrete Safeguards

For practitioners, the key point is the Court's acceptance that a legislature may carry out the balancing exercise in advance, by establishing general categories and exceptions, rather than requiring an individual assessment in every case.

In principle, this confirms that standardised "naming and shaming" registers, such as those operated by NADA and similar bodies in other countries, may be compatible with the GDPR. In this respect, the Court follows Advocate General Ćapeta's view that the legislature may itself carry out the required balancing exercise.

However, the Court also makes clear that general categories are not always sufficient. Where they do not guarantee a proportionate result in the individual case, the national anti-doping agency, acting as data controller, must carry out an individual assessment. The Court also sets specific limits concerning the duration of publication and the athlete's age.

Anti-doping bodies can therefore no longer simply apply the categories laid down in the ADBG automatically. This reflects Advocate General Spielmann's concern that, even within a general legislative framework, publication may produce disproportionate results in individual cases, particularly where information remains available online for a very long time. In practice, national anti-doping bodies will need appropriate mechanisms to review borderline cases, for example where an athlete's circumstances are close to, but do not formally fall within, one of the statutory exceptions. They will also need mechanisms to review or remove information once the sanction has expired or the athlete has clearly retired. Some aspects of this part of the judgment, however, are not entirely easy to reconcile.

First, the Court considers whether the athlete is "high-profile" or nationally or internationally renowned as a relevant factor in deciding whether an individual assessment is required. This is not entirely consistent with the Court's earlier reliance on deterrence as one of the main reasons justifying publication. The Court explains that well-known, high-level athletes bear "a special responsibility".[105]

This formula, however, does two different kinds of normative work at once, without the judgment distinguishing between them.

On one reading, the *status-based* one (the more famous, the less protection), the prominent athlete has taken on a public role and must accept closer scrutiny of its consequences, an argument that would, if anything, count against extending individualised protection.

On another reading, it is a *harm-based* claim (the more famous, the greater the potential damage), the prominent athlete stands to suffer materially greater reputational damage from a given publication than an obscure one would, a reason for extra protection, not against it.

The judgment's actual conclusion follows only the harm-based reading, yet uses language ('special responsibility') that more naturally evokes the status - based one. It does not explain why the same harm-based concern should not apply equally to the recreational athlete or vulnerable person already protected by the legislative exceptions. The better reading is that the Court does not treat fame as an independent criterion in its own right, but rather as a way of measuring how much harm the publication would cause; the judgement, however, does not spell this out and it is left to commentators to reconstruct it.

Second, the duration and age-based ceilings, while a welcome concretisation of the proportionality principle, create a paradox the Court does not address. A lifetime ban has, by definition, no natural end date, so tying publication to 'the duration of the sanction' sets no real limit at all; the age-based ceiling helps only athletes whose careers would end naturally, and does little for a young athlete facing a lifetime ban who might otherwise have competed for decades. The judgment says nothing about how these two limits apply to a lifetime ban imposed on a young athlete, arguably the hardest case

[105] *NADA Austria and Others*, C-474/24, paragraph 103 ('high-level athletes who are well-known have a special responsibility').

for the Article 8 Charter right at stake, leaving a likely recurring dispute for national courts to work out on their own.

Third, by accepting abstract legislative balancing subject to a residual duty of individual review, the Court hands national anti-doping bodies a genuinely difficult institutional problem with little practical guidance. Unlike a data protection authority or a court, bodies such as NADA are not typically resourced or procedurally equipped to carry out the fact-specific proportionality assessments Article 6(3) GDPR now requires at the margins of the legislative categories. Nor does the judgment specify what standard of review a national court should apply to a controller's decision on whether an individual assessment was needed. The practical burden of the judgment therefore falls less on legislatures, who keep their existing categorical schemes, than on the anti-doping bodies applying them, a shift in responsibility the Court does not explicitly acknowledge.

4.4 Article 10 GDPR and the Autonomy of Sport

The Court's conclusion that anti-doping sanctions fall outside Article 10 GDPR sits comfortably within its broader jurisprudential treatment of the specificity of sport, reflected as far back as *Meca-Medina*.[106] The Court analogises anti-doping sanctions to professional disciplinary measures rather than to generally applicable criminal or administrative penalties,[107] and, in doing so, preserves a coherent, EU-autonomous boundary around Article 10, consistent with its refusal, in *Latvijas Republikas Saeima*, to extend that provision beyond genuinely criminal matters.[108]

The consequence is that anti-doping publication regimes need not satisfy the heightened safeguards (official-authority control, or specific legislative authorisation) that Article 10 would otherwise impose. That leaves Articles 5, 6 and, where relevant, 9 as the operative constraints.[109]

This holding is defensible as a matter of GDPR-internal reasoning, but it sits somewhat awkwardly alongside the Strasbourg case law the Court itself invokes in support of it. The autonomous 'criminal charge' test developed in *Öztürk*, on which the judgment relies is not, in fact, confined to rules addressed to the population at large ;[110] the so-called "*Engel* criteria" namely: the domestic classification of the proceedings, the nature of the offence, and the severity of the potential penalty, direct particular attention to the third point, and anti-doping sanctions can be severe

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[106] Ibid., paragraph 85, citing *Meca-Medina and Majcen v Commission*, C-519/04 P, paragraphs 43 to 45. S. Bastianon, M. Colucci (eds.), *The Legacy of Meca-Medina*, SLPC, forthcoming.
[107] Ibid., paragraph 115.
[108] Ibid., paragraph 113, citing *Latvijas Republikas Saeima* (Penalty points), C-439/19, paragraphs 77 and 78.
[109] Ibid., paragraph 111, and point 4 of the operative part.
[110] Ibid., paragraph 116, citing ECtHR, judgment of 21 February 1984, *Öztürk v. Germany*, CE:ECHR:1984:0221JUD000854479, paragraph 53.

indeed: multi-year or lifetime competition bans, forfeiture of earnings, and, as the judgment itself records, a bar on employment by any sports organisation.[111]

The European Court of Human Rights' own finding in *Mutu and Pechstein*, which the Grand Chamber cites for the proposition that professional disciplinary proceedings involve 'civil' rather than criminal rights,[112] in fact concerned the fairness of CAS arbitration proceedings under Article 6(1) ECHR, a rather different question from whether a *sanction's severity* tips a disciplinary regime into the 'criminal' category for the distinct purposes of Article 10 GDPR.

The judgment would have probably been on firmer ground engaging directly with the severity of the *Engel* test, for instance, by explaining why a lifetime, livelihood-ending ban is qualitatively different from the criminal sanctions the *Engel* case law has in mind.

Instead, it rests the distinction, primarily on the disciplinary, sport-specific character of the rules, the size of the group to which they apply, and the additional, integrity-preserving purpose they serve.[113]

Taken in isolation, however, that criterion could in principle be satisfied by regimes considerably more punitive than a professional disciplinary code.

Had the Court concluded that anti-doping sanctions fall within Article 10, national anti-doping bodies (most of which are constituted, as in Austria, as private-law entities exercising delegated public functions rather than as organs of 'official authority') would likely have needed specific legislative authorisation going beyond what most Member States' anti-doping statutes currently provide, and independent judicial or quasi-judicial oversight of the kind Article 10 in fact requires when data is processed other than under official authority control.

By excluding anti-doping sanctions from that regime,[114] the Court has spared the existing institutional architecture of European anti-doping enforcement, built around bodies exercising delegated rather than official authority, a potentially disruptive restructuring exercise; whether that outcome should be welcomed as pragmatic or criticised as under-protective of athletes facing career-ending sanctions is likely to remain a live question in the literature.

4.5 Strengthening Preventive Protection under Article 77

The Court's answer to the seventh question meaningfully strengthens the practical value of the right to complain under Article 77 GDPR, particularly in contexts, such as anti-doping publication, where the harm caused by disclosure is not easily reversible once it has occurred, given the risk of onward reproduction on third-party websites.

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[111] Ibid., paragraph 109, referring to Paragraph 24(4) of the ADBG.

[112] Ibid., paragraph 116, citing ECtHR, judgment of 2 October 2018, *Mutu and Pechstein v. Switzerland,* CE:ECHR:2018:1002JUD004057510, paragraph 58.

[113] Ibid., paragraphs 115-118.

[114] Ibid., paragraphs 119 and 120 and point 4 of the operative part.

By allowing a complaint to be lodged, and considered on the merits, before publication takes place, provided concrete indications of imminence exist, the Court aligns the practical operation of Article 77 with the preventive corrective powers, including the power to issue warnings, that Article 58(2)(a) GDPR already confers upon supervisory authorities.

This is a welcome development for athletes facing an imminent ban. They will now be able to seek an assessment of the proportionality of publication in advance, rather than being confined to an after-the-fact right to erasure whose practical utility, once information has spread across the internet, may be limited.

That said, the Court's chosen threshold, 'specific indications' that processing 'is imminent or will occur in the near future', imports a degree of evidential uncertainty into what is, functionally, an application for anticipatory relief.

The judgment gives comparatively little guidance on what will count as sufficiently 'specific': on the facts, YT's position was straightforward, since a four-year ban had already been formally imposed and publication was simply pending administrative execution of a decision already taken. It is less clear how the test applies further upstream (for instance, at the moment disciplinary proceedings are opened, or after a first-instance decision is appealed but before it becomes final) where the prospect of eventual publication is real but contingent on the outcome of ongoing proceedings.

A test pitched too loosely risks supervisory authorities being asked to adjudicate the proportionality of publications that may never occur, diverting resources from the core caseload of completed infringements; pitched too strictly, it risks reproducing exactly the gap in protection, a remedy that arrives only once irreversible harm has occurred, that the Court's own teleological reading of Article 77 was designed to close. The judgment leaves that calibration to be worked out by national supervisory authorities and, in due course, further preliminary references.

The Court also left undecided the substantive standard a supervisory authority must apply once a pre-emptive complaint is admissible. Presumably it remains the ordinary proportionality analysis set out in relation to the third and fourth questions, transposed to a prospective assessment.

This means a supervisory authority faced with a pre-emptive Article 77 complaint must, in effect, predict how the individual balancing exercise described in section 3.3 above would come out once the publication actually takes place. This is a task analytically more demanding than the retrospective erasure claims Article 77 more typically handles, and one for which neither the GDPR's text nor this judgment provides a bespoke procedural framework.

4.6 Two Advocates General, One Court: A Compromise Rather than a Choice

Standing back from the individual questions, the overall pattern that emerges from comparing the judgment with the two prior Opinions is one of selective synthesis rather than simple adjudication between rival camps.

Advocate General Ćapeta's Opinion rested heavily on a formal, competence-based understanding of EU law, treating the absence of an explicit legislative competence in sport as effectively determinative both of the GDPR's inapplicability and of the legislature's exclusive prerogative to perform the proportionality balancing; her approach also displayed a marked practical realism regarding the mechanics of public disclosure, defending both the deterrent value of naming individual athletes and the unavoidability of internet publication as the modern means of reaching the public.[115]

Advocate General Spielmann's Opinion, by contrast, was anchored in the Court's settled case law construing the exceptions to the GDPR's scope narrowly. It was markedly more protective of the individual athlete, in particular through his emphasis on the temporal dimension of harm, the risk of 'digital stigmatisation', and his insistence that the controller's accountability obligations survive even a legislative mandate to publish.[116]

The Grand Chamber's judgment tracks Advocate General Spielmann almost entirely on the threshold question of scope and on the qualification of health data.

On the second and third points of the proportionality test, however, it tracks Advocate General Ćapeta's practical assessment of the appropriateness and necessity of personalised, internet-based disclosure.

It is only at the fourth point, proportionality *stricto sensu*, that the Court constructs something genuinely new: an architecture that accepts, with Advocate General Ćapeta, that legislative abstraction is a legitimate starting point, but that grafts onto it, in Advocate General Spielmann's spirit, a residual duty of individualised review and hard temporal ceilings tied to the duration of the sanction and to the athlete's age.

For practitioners and legislators alike, the lesson is that neither a purely legislative, 'set and forget' publication regime, nor an unqualified expectation of case-by-case discretion, will now suffice. The ADBG model, suitably supplemented, is likely to become something of a template for other Member States: it already combines abstract categories with a handful of built-in exceptions of the kind the Court now requires to be applied, and reviewed, in a manner sensitive to the individual case.

Placed within the Court's wider case law on public registers and transparency obligations, the judgment can also be read as the sporting-law instalment of a doctrinal line running through *Luxembourg Business Registers* (on public access to beneficial-ownership registers) and *SCHUFA Holding* (on the duration of publication of discharge-from-debt information in credit registers). In both of those contexts, as here, the Court has resisted an all-or-nothing choice between blanket public disclosure and a purely individualised regime, instead requiring the legislative scheme to build in durational and categorical safeguards proportionate to the harm publication can cause.

[115] Opinion of Advocate General Ćapeta, paragraphs 87 to 90, 136 to 141 and 148 to 170.
[116] Opinion of Advocate General Spielmann, paragraphs 40 to 60, 145 to 158 and 172 to 178.

The NADA Austria judgment extends that logic to a new field, sport-disciplinary sanctions, and, in doing so, effectively confirms that 'naming and shaming' as a regulatory technique, wherever it is deployed by a Member State to pursue a public-interest objective, will be judged by a broadly consistent proportionality template: legitimate abstract objective, appropriateness, necessity (including consideration of less intrusive alternatives), and proportionality *stricto sensu* bounded by duration. Read this way, the judgment's significance extends beyond anti-doping law proper; it is a further data point in the Court's emerging general theory of how the GDPR constrains public 'transparency registers' of all kinds, from corporate ownership to consumer insolvency to, now, athletic discipline.

At the same time, the transposition is not seamless. Beneficial-ownership and credit-discharge registers exist primarily to inform third parties transacting with the person concerned (creditors, business counterparties) whereas anti-doping publication additionally serves an expressive, quasi-punitive function: it is intended, in part, precisely *to* stigmatise, as a means of general deterrence.

The Court's own four-point analysis acknowledges as much when it accepts that naming performs a function 'confidential enforcement cannot replicate'. This expressive dimension distinguishes anti-doping publication from the more purely informational registers considered in the earlier case law, and arguably called for a more explicit reckoning, on the Court's part, with the tension between a proportionality methodology developed for informational transparency and a publication regime whose declared purpose includes reputational sanction. The judgment does not engage with this distinction, effectively assuming that the same four-pont template can be applied unmodified across both types of regime.

4.7 Global Reach: WADA, ADAMS and the 'Brussels Effect'

The judgment's significance is not confined to the European Union. In fact, the preliminary ruling procedure formally binds only Member States and their national courts but it does not, as such, bind the World Anti-Doping Agency (WADA), a private Swiss foundation, nor the national anti-doping organisations of non-EU States.[117] Yet the practical reach of the judgment is likely to extend well beyond that formal boundary.

Personal data collected for anti-doping purposes circulate internationally. They travel through the transmission of samples to foreign laboratories, through data-sharing between national anti-doping organisations, international federations and major event organisers, and, ultimately, through WADA's own information clearinghouse, the Anti-Doping Administration and Management System ('ADAMS'), operated from Canada.[118]

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[117] S. Bastianon, *Anti-Doping Sanctions and Data Protection Under EU Law – A Comparison of the Advocates General's Opinions in the NADA Cases*, RDES, Vol. XXI, 2025, 119.

[118] European Commission, *Anti-Doping & Data Protection, An evaluation of the anti-doping laws and practices in the EU Member States in light of the General Data Protection Regulation*, 2017, 17.

Article 3(2) GDPR already extends the Regulation's reach to the processing of EU data subjects' data by non-EU controllers in certain circumstances. This means that ADAMS-based processing of EU athletes' data may itself fall within the GDPR's scope regardless of where the processing physically occurs.

If EU-based anti-doping organisations must now abandon undifferentiated, unlimited-duration publication in favour of the regime described above, the volume and shape of the data flowing into ADAMS, and the duration for which it remains publicly accessible, are likely to change accordingly.

Since the WADA Code is designed to secure worldwide uniformity across more than 700 signatories, any EU-specific adjustment creates friction with that harmonising ambition. WADA has already had cause to manage such friction: the European Data Protection Board, through its predecessor the Article 29 Working Party and subsequently in its own right, has repeatedly engaged with WADA over the compatibility of the Code and its International Standards with EU data protection law, most recently in Recommendation 1/2025 on the 2027 WADA Code.[119]

Faced with the risk of regulatory fragmentation, WADA may find it more attractive to extend GDPR-inspired safeguards globally than to maintain divergent regimes for EU and non-EU athletes, an instance of what has been described as the 'Brussels effect', whereby EU regulatory standards are exported *de facto* through the practical necessity of a single, harmonised compliance framework.[120]

For national anti-doping organisations, the operational consequence is likely to include a renewed emphasis on Data Protection Impact Assessments for the large-scale processing of athletes' biological and health-adjacent data. This is an obligation that is too often neglected in practice, despite its mandatory character under the GDPR.[121]

4.8 Open Questions Left by the Judgment

Beyond the specific difficulties identified above in relation to each question referred, the judgment leaves at least four broader issues unresolved, each of which is likely to generate follow-on litigation or, at minimum, divergent national practice pending further clarification.

First, the judgment says nothing about the position of sanctions already published, in some cases for years, under the pre-existing, unmodified categorical regime. Does the newly articulated duration ceiling apply retroactively to entries currently online whose underlying sanction has already expired, obliging immediate de-listing, or does it operate only prospectively for sanctions imposed after the

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[119] *European Data Protection Board*, Recommendation 1/2025 on the 2027 WADA World Anti-Doping Code, 11 February 2025.

[120] A. Bradford, *The Brussels Effect: How the European Union Rules the World* (New York, 2020; online edn, Oxford Academic, 19 December 2019), *https://doi.org/10.1093/oso/9780190088583.001.0001*, accessed 27 July 2026.

[121] S. Bastianon, *Anti-Doping Sanctions and Data Protection Under EU Law – A Comparison of the Advocates General's Opinions in the NADA Cases*, RDES, Vol. XXI, 2025, 121 to 122.

date of the judgment? The Court frames its ruling as an interpretation of provisions of the GDPR that have applied since 2018. The more natural reading, therefore, is that the duration limit has, in principle, always been implicit in Articles 5 and 6 GDPR and, therefore, applies immediately to existing publications. Such a reading would require NADA and its counterparts elsewhere to conduct, without transitional relief, an immediate audit of their published registers, a considerably more onerous exercise than prospective compliance alone.

Second, the judgment does not address the burden of proof in disputes over whether the legislative categories 'guarantee proportionality' in a given case, nor who bears it: the athlete challenging publication, or the controller seeking to justify it. Nevertheless, Article 5(2) GDPR places the burden of demonstrating compliance on the controller generally.

A consistent reading would therefore place the burden on the anti-doping body to show either that the case falls squarely within an adequate legislative category or that it has itself conducted the individual balancing the Court requires. The judgment does not say so explicitly, however, and national courts may divide on the point.

Third, the interaction between the health-data qualification and the proportionality framework discussed is addressed only in outline.

The Court does expressly require cumulative treatment: where the referring court finds that a publication does disclose health data, it must assess proportionality under both Article 5(1)(c)/Article 6(3) and the Article 9(2)(g) derogation.[122]

What the judgment does not spell out, however, is how the two standards interact substantively, whether satisfying the stricter, more narrowly construed Article 9(2)(g) derogation (necessity for reasons of substantial public interest, respect for the essence of the right, suitable and specific safeguards) automatically satisfies the more general Article 6(3) proportionality test, or whether a controller must instead run two analytically distinct proportionality assessments in parallel, potentially reaching different conclusions on, for instance, the permissible duration of publication.

A case combining both (a lifetime ban naming a substance with an ambivalent therapeutic profile, imposed on a high-profile athlete) would force that open question to be answered directly, and national courts are left to develop the answer themselves.

Fourth, and more generally, the judgment is silent on the standard and scope of judicial review a national court should apply when an athlete challenges a controller's proportionality assessment. It is unclear whether the referring court (or any other national court) is confined to reviewing that assessment for manifest error, or is entitled to substitute its own view of where the proportionality balance lies. Given the highly fact-sensitive nature of the exercise the Court has just mandated, the choice of standard of review will materially affect how much practical

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[122] *NADA Austria and Others*, C-474/24, paragraph 95.

protection athletes actually obtain from the judgment's more protective elements. That question, however, is one the Grand Chamber leaves entirely to national procedural law.

5. *Concluding Remarks*

NADA Austria and Others confirms that the fight against doping, however specific its objectives and rules, is not a data protection-free zone.

The judgment allows Member States to maintain general statutory rules requiring the publication of the names of sanctioned athletes, subject to three main conditions. First, the information published must not disclose health data without an appropriate legal basis. Second, the categories and exceptions established by national law must be supplemented by an individual balancing exercise where they do not, in themselves, ensure a proportionate result. Publication must also be limited in time, taking into account the duration of the sanction and the athlete's ability to continue competing. Third, athletes must have an effective right to complain under Article 77, including, where necessary, before publication takes place.[123]

For national anti-doping organisations across the Union, the challenge is now to apply these principles in practice. This will require clear rules on when published information must be removed, individual reviews in borderline cases, and procedures for dealing with complaints made before publication. These safeguards should allow transparency in the fight against doping to be maintained while ensuring that any interference with athletes' rights remains proportionate.

The Grand Chamber has also largely settled, at least within the European Union, the differences between the approaches taken by Advocates General Ćapeta and Spielmann in the two *NADA* cases. Neither Opinion is followed in full. Instead, the judgment combines elements of both: a broad application of the GDPR, a fact-sensitive approach to health data, general legislative rules supplemented where necessary by individual assessment, the exclusion of anti-doping infringements from Article 10, and preventive protection under Article 77.

Finally, the above analys suggests a reason why the judgment may reach beyond the Union: the practical difficulty of maintaining separate compliance regimes for EU and non-EU athletes gives WADA an incentive to extend the same safeguards globally.

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[123] See, on the general debate over the calibration of transparency and privacy in anti-doping enforcement, S. Bastianon, M. Colucci, *The European Union and Sports Handbook*, SLPC, 2025, 219 to 221.

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