

**Minutes of the WADA Executive Committee Meeting  
20 September 2008  
Montreal, Canada**

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The meeting began at 9.10 a.m.

**1. Welcome, Roll Call and Observers**

THE CHAIRMAN welcomed everybody to the Executive Committee meeting, particularly acknowledging some new representatives at the table that morning: from Japan, Ms Tomoko Ukishima, representing the new member, Mr Matsuno; also, from Denmark, representing Mr Mikkelsen, who had recently been promoted in government, Ms Bente Skovgaard Kristensen; and, because there was an election inconveniently taking place in New Zealand, Mr Graeme Steel was representing Mr Cosgrove. He also welcomed the officials and observers, and thanked them for the efforts they had made to attend in such good numbers. It would be remiss of him, at the conclusion of the successful Olympic Games and Paralympic Games, not to acknowledge the colleagues from sport for the significant effort that they had made and the wonderful success achieved. He singled out two of the members, the WADA Vice-President, Professor Ljungqvist, and Dr Schamasch, (who was representing Mr Ricci Bitti), both of whom had played a significant role in the anti-doping program. The results that had come through indicated great success; but, perhaps more importantly, as a sporting event, it had been a wonderful story and those who had had the privilege to share some of it well and truly understood that. He congratulated everybody, and he thought that the world had seen once again a magnificent spectacle with all of the ideals of sport encapsulated in an emerging nation. It was good to be able to say that at the first meeting, after both events had taken place.

The meeting agenda spoke for itself. He would endeavour to give the members ample opportunity to put their points as they wished to, reserving the right to draw any particular issue to a conclusion if he believed that appropriate debate had occurred. Sometime, debate was very healthy; on the other hand, the members needed to try and stay focused on the issues of value and importance and ensure that they got through the agenda in a timely fashion.

The following members attended the meeting: Mr John Fahey, AC, President and Chairman of WADA; Ms Kristensen, representing Mr Brian Mikkelsen, Minister of Culture and Sport, Denmark; Professor Arne Ljungqvist, WADA Vice-Chairman, IOC Member and Chairman of the WADA Health, Medical and Research Committee; Ms Rania Elwani, Member of the IOC Athletes' Commission; Ms Tomoko Ukishima, representing Mr Hirokazu Matsuno, Minister in Charge of Sports, Ministry of Education, Culture, Sports, Science and Technology, Japan; Mr Scott Burns, Deputy Director of the ONDCP; Sir Craig Reedie, IOC Member; Mr Makhenkesi A. Stofile, Minister of Sport and Recreation, South Africa; Mr Graeme Steel, representing Mr Clayton Cosgrove, Minister for Sport and Recreation, New Zealand; Mr Gian Franco Kasper, IOC Member and President of the FIS; Dr Patrick Schamasch, representing Mr Francesco Ricci Bitti, President of the International Tennis Federation and Member of ASOIF; Mr Mustapha Larfaoui, IOC Member and President of FINA; Mr Bouchard, representing Ms Helena Guergis, Secretary of State (Foreign Affairs and International Trade) (Sport), Canada; Mr David Howman,

WADA Director General; Mr Rune Andersen, Standards and Harmonisation Director, WADA; Dr Olivier Rabin, Science Director, WADA; Mr Rob Koehler, Education Director, WADA; and Mr Olivier Niggli, Finance and Legal Director, WADA.

The following observers signed the roll call: Andrew Ryan, Torben Hoffeldt, Markus Adelsbach, Mikio Hibino, Michael Gottlieb, Brian Blake, Hajira Mashego, Jean-Pierre Lefebvre, François Allaire, Felicity Buchanan, Maria Pisani, Osquel Barroso, Dan Cooper, Shannan Withers, Frédéric Donzé, Stacy Spletzer, Stuart Kemp, Emiliano Simonelli, Victoria Ivanova, Irene Mazzoni, Anne Jansen, Satoshi Ashidate, Ichiro Kono, Lotte Bjerre Kristoffersen, Hiroshi Kurisaki, Shin Asakawa, and Tenille Hoogland.

## **2. Minutes of previous meetings – 10 and 11 May 2008 (Montreal)**

THE CHAIRMAN asked whether it was the members' wish that he sign the minutes of the meetings on 10 and 11 May 2008 as an accurate record of the proceedings on both of those occasions in May. No feedback had been received by the WADA management following the circulation of the minutes some weeks previously.

### DECISION

Minutes of the meetings of the Executive Committee on 10 and 11 May 2008 approved and duly signed.

## **3. Director General's Report**

THE DIRECTOR GENERAL referred to a number of the items in his report. With regard to the UNESCO Convention against Doping in Sport, WADA now had 95 ratifications, and there were six other countries in the legal pipeline. In other words, the countries had ratified and had sent the required documentation to UNESCO in Paris, but it did take some time for the lawyers at UNESCO to check it, so six more were very close. WADA had joined UNESCO in a project to gather legislation relating to the sale and supply of performance-enhancing drugs. The project had been completed, and he had a copy there if anybody wished to look at it. The WADA management would work further with the information given to see what WADA could do to encourage countries to pass appropriate laws in relation to trafficking and distribution in particular. That had been a successful joint venture about which he was very pleased.

The Interpol General Assembly would be taking place the following month, and Mr Niggli would be attending. A memorandum of understanding was among the members' papers, to be signed by Interpol at the assembly. It was slightly different to the document approved by the Executive Committee members in May, but the changes were insignificant as far as substance was concerned, so the management would proceed with that and, when Interpol completed the documentation, the WADA President and he would sign it.

Progress had been made relating to investigations. The draft protocols discussed in Sydney in May would be fine-tuned by the working group in the coming weeks. The management would then look at putting case studies into place, so that each of the protocols could be seen in a practical way. One more meeting of the expert group would probably be held to discuss the case studies before publication. There had been a very major Australian case two days previously whereby a CAS decision had upheld the process undertaken in Australia to find an athlete guilty for possession of hGH. This was one of the first of such cases that had gone to the CAS and was a significant decision in terms of the way forward and will provide a precedent for others to follow.

The papers showed a list of the cases currently being appealed and those that had been the subject of recent results. The legal team continued to be very busy on a daily basis regarding the lodging of appeals. He did not see this work decreasing with the

revisions to the Code. Without wishing to trumpet, WADA had been successful in all cases and the sanctions sought by WADA at tribunals had been granted.

In relation to the standing committees, the time for nominations had been extended until 10 October to ensure that everybody had an opportunity to consider the lodging of appropriate nominations.

A team would go to Nigeria in October, and would run the same sort of programme as it had done the previous year in India. WADA was looking at a similar project for Brazil and also Jamaica, for obvious reasons following the Olympic Games in Beijing. The objective was simply to make sure that what was set up was working according to best practice.

With regard to communications, WADA had endeavoured to keep pace with the way in which communications around the world were now taking place. For young people, WADA was preparing a very good project for the Youth Olympic Games, to be trialled at the Commonwealth Games in India. WADA was also looking at YouTube and Facebook, and a new website was being developed, to be in place the following year. WADA would need a Webmaster on its staff to ensure that it was keeping with the times and to ensure a user-friendly website.

The management had thought carefully about the media and media access to information, and was now providing "b-rolls", which were short video clips, so that, when journalists were looking at stories for dissemination, they could take a short video with a statement from the WADA President and use such information, rather than requesting interviews. This was a significant step, for which the media were grateful, and Mr Donzé had been very busy keeping that going over the past few days.

In the field of education, the meeting of the Education Committee would be held the following week, and Mr Koehler and his team would be going to Puna in India in October to run a trial programme for the Youth Olympic Games. This would be quite exciting.

The RADOs continued to advance. The WADA members should pat themselves on the back. The RADO project had shown international progress unmatched by any other international organisation and, within five years, had reached out to 122 new countries that, prior to the programme, had not had anything in place in relation to anti-doping programmes. WADA now had in its coffers 98% of government contributions to date, but had also involved a further 122 countries in anti-doping. When looking forward to WADA's tenth birthday the following year, he thought that the members should look at celebrating being a unique body and achieving some rather unique successes, and of course the Executive Committee and Foundation Board had made that happen, and he was extremely pleased at the progress.

ADAMS was another major project that had to be adopted and used by everybody, and members had seen recent times when ADAMS had not been in use and where there had been problems as a result of old-fashioned modes of communication. It was necessary to win over the last remaining doubters and individuals who feared change. The previous year, it had been decided not to have ADAMS as a mandatory programme in the Code but, moving forward, he could see the benefits of making it mandatory. He asked the members to make sure that they went and encouraged everybody who had not started to use ADAMS to do so. An addendum to the report showed that he had floated the idea of making ADAMS mandatory for TUEs, as this was one area in which the benefits would be immediate, in terms of harmonisation, cost saving, information and other ways and means of achieving efficiency.

In relation to the Beijing Olympic Games, the Independent Observer team had provided a draft report to the IOC. The IOC would read it and make comments in the event of any factual errors, and then return it to Sarah Lewis and her team for final consideration of the report before publication in two weeks' time.

There had been a really successful Athlete Outreach team at the Olympic Games and the Paralympic Games. When looking at the way forward, education and information

made huge headway in the fight against doping in sport, and he wanted to ensure that these projects would be encouraged and enhanced.

With regard to the Athlete Passport project, a special group had been formed to ensure that the passport continued to grow and become available to every ADO. There were some ideas about how this might progress; it was necessary to ensure the participation of the important people responsible for this sort of programme and he would look at finding an appropriate way of achieving that as 2008 drew to a close.

There was a note from him to Mr Kasper regarding GAISF in the members' papers. They had had a very fruitful discussion during Sport Accord in Athens, and he was now tabling an item, the concept of which he asked the Executive Committee to consider and approve. He was not asking for budgetary approval or for the details to be approved yet but, if there was no objection to the way forward he had projected within the correspondence, he wanted to proceed further with Mr Kasper and others at GAISF in order to put this into place. If there were any questions relating to the concept, he would be happy to field them.

Regarding the Montevideo office, he had been very concerned that the Uruguayan Government had not paid rental as agreed. The government had made a proposal to remedy the situation, and he would be meeting with representatives in Montevideo in early October and he hoped to be able to report in November that this was no longer a problem.

In relation to betting and corruption, WADA had to continue to be vigilant, as it did not currently have sufficient time or resource to deal effectively with this issue. He could not expand his management team any more or increase staff hours to set up a small working group as he had been directed. He was alert to the issue but WADA did not have sufficient hours to devote to it. He hoped to work with the IOC, which had a small working group, and use the liaison person who would eventually be working at Interpol to talk about how to progress in an effective and efficient fashion.

Two symposia would be taking place the following year. The ADO symposium, for which plans were under way, would take place on 24-25 April in Lausanne, and WADA expected between 250 and 300 attendees from every ADO in the world. The project would be one in which WADA was not preaching and teaching, but engaging significant individuals from other ADOs to make presentations. WADA would facilitate it, and the outcome in mind was to produce a working group or working groups to provide models of best practice, to enable WADA to start looking at means of being more cost-effective and qualitative in the way in which programmes were run, more targeted, and so on, so that those putting money into anti-doping could see that they were getting value for money.

The other symposium was the Thought Leadership symposium, to engage 30 to 40 people. WADA was talking with the authorities in Norway to schedule that towards the end of June, and he might be in a position to provide more information on that at the November meeting.

He had included in his report a memorandum that he had written in relation to Landis. This was a case in which more than two or three million dollars of anti-doping money had been spent to catch a cheating cyclist, who had engaged lawyers who had used arguments not based on fact, and he (as a practising lawyer for many years) had never read such a damning judgement as that delivered by the CAS in relation to the Landis lawyers and the experts who had given evidence on his behalf. It had been a nonsense, and they had convinced not only one member of the original tribunal that they were correct, but also the public, who had a perception that the poor man was being preyed upon by the anti-doping organisations. It was a lot of hogwash, so much so that he had asked the lawyers representing USADA to consider whether WADA should look at a complaint of the professional behaviour of those involved. He was awaiting the opinion from the lawyers. Not only had this occurred in the Landis case, but also in the Armstrong arbitration, whereby a scientist by the name of Coyle had been revealed as giving evidence that had been a hoax. WADA was confronting this kind of issue on a

more regular basis. People were being paid to give evidence that might suit a style of case, but that did not suit the facts. WADA had its eyes on these things and would deal with them in a professional and proper manner, but the members should be alert to the fact that, when reading the headlines, lawyers or scientists might be projecting a personal view that had nothing to do with the case itself. Landis was seeking to ride again; WADA had been communicating through USADA with the UCI to make sure that, if given a licence to ride again, it would be conditional on his payment of the costs directed by the CAS (100,000 dollars), and WADA was asking the UCI to say that no licence would be granted unless payment was made or satisfactory arrangements for such payment would be made.

WADA was planning for its tenth birthday, which would be in November 2009, and had in mind some ways of celebrating this. He would put to the Foundation Board in November some options, in the form of a celebration to look at what had been achieved, not to be content with where WADA was but to be content with what had been achieved thus far, and might engage some of the original personalities who had served on the first Foundation Board to make brief presentations or provide them by video. Everybody remembered Minister Balfour, Minister Vanstone, Mr Talberg and, of course, Mr Coderre, who had kept reminding everybody to keep the "W" in WADA. It would be remiss of WADA to forget all these people when celebrating WADA's tenth birthday, and he was looking at ways and means of involving them.

That covered most of the issues raised in his report. He would be happy to answer any questions or provide any further comment if required.

THE CHAIRMAN thanked the Director General.

DR SCHAMASCH thanked Mr Andersen and his team for their fantastic cooperation in Beijing. He wondered whether the Director General could expand upon the legal issue relating to Petacchi in his report. In relation to ADAMS, everybody was convinced that it would be a great tool; unfortunately, it was based on the Internet, and there had been some problems in Beijing relating to the small NOCs. Some of the statistics reflected the Internet problems. ADAMS was very much linked to Internet so, if it were made mandatory, WADA had to ensure that there would be an Internet connection. This issue had been seen in Beijing in relation to whereabouts. Most of the NOCs not totally compliant with whereabouts had been small NOCs with Internet connection problems. If ADAMS were made compulsory for TUEs, there could be some problems.

THE DIRECTOR GENERAL thanked Dr Schamasch for his kind words about Mr Andersen and his team. They slaved away without much thanks, and he would be happy to pass on the congratulations. He asked Mr Niggli to respond about the Petacchi case and the legal report. His report included the reports from the WADA directors, so as to save the members having more papers. He was aware of the issues relating to the Internet and the smaller countries with ADAMS, which was why ADAMS had not been made mandatory the previous year, but this did not stop WADA from being really enthusiastic and making sure that it catered for 90% of the world, bearing in mind that the other 10% would have to catch up. WADA was trying to run its programmes to cover the majority, whilst taking into account the minority. He thought that it was necessary to proceed with that in mind, but he agreed that he did not think that ADAMS would become mandatory because of that difference.

MR NIGGLI said that WADA had asked for a two-year sanction for Petacchi, but he had been sanctioned for one year.

THE CHAIRMAN wished to emphasise two or three points. The members should acknowledge that, in the Interpol arrangement, which would hopefully be of some assistance in the issue of sports betting, the generosity of France should be recognised, as France had indicated at the previous Foundation Board meeting that it would be prepared to provide the officer, and this was progressing, so he was hoping that the whole matter would come to a conclusion over the next month or two and then, in the

new year, this resource should be working with WADA in the fight against doping in sport.

He also sought an approval in principle to conduct further work on the GAISF matter, relating to assistance that might be provided to the small federations in the context of testing. It was a matter that would have to come back in detail once it had been worked out, but was the Executive Committee happy to give approval in principle for further work to be done on that particular issue for ultimate consideration when it returned in due course? It was a good initiative and gave an opportunity for the smaller IFs to have a resource. He was pleased with the discussions that had taken place to address this and the initiative shown by Mr Kasper and the Director General, and he was sure that the members would hear more about this at a later point in time.

He thanked the Director General for the report.

### **3.1 WADA Constitution – Article 7**

THE CHAIRMAN said that this was a matter he had initiated the previous time, asking for consideration to be given to remove any ambiguity, if there was seen to be ambiguity.

THE DIRECTOR GENERAL reminded the Executive Committee members that WADA was a private foundation established under Swiss law and, as such, looked to the guidance that was given by the Swiss-based lawyers in respect of the constitution and the way in which it worked. It had to work pursuant to Swiss law and it had been drafted at the outset by the Swiss lawyers engaged by WADA. He had gone back to the lawyers and asked them for their view in relation to article 7, and had been advised that there was sufficient clarity in the article as it stood, and so had reported back accordingly to say that this was the management view that had been sought. He would certainly be happy to go further if instructed to do so. The members needed to remember (and would need to get back to what WADA was) that WADA was a private Swiss foundation, not a governmental organisation or a body governed by international law. When reflecting on how things should be changed, it was necessary to go back to the Swiss lawyers for guidance.

After passing on the greetings of Mr Mikkelsen, MS KRISTENSEN said that, during the last WADA meetings in May, it had been agreed that WADA would look into article 7 to see if there was any need for clarification or amendment, and then it had been proposed that WADA would consult the Council of Europe before publishing the assessment. A number of European representatives had expressed their concern regarding the issue at the previous Foundation Board meeting. From the document relating to the item, as well as the intervention made by the Director General, it seemed clear that WADA was of the opinion that the drafting of article 7 was clear and did not require modifications, and therefore the management recommended that no change be made to the article. However, as mentioned by one of the European representatives of the Foundation Board at earlier discussions on the issue, Europe welcomed WADA's readiness to amend the WADA statutes to clarify a number of issues, while reserving WADA's position on whether this should be done through a statutory amendment or through additional regulations. She was seeking reassurance on behalf of the European countries that the issue would remain on the agenda and that WADA would pursue the matter in close cooperation with all interested stakeholders. Article 7 should be analysed and discussed further, and a working group had been set up to that effect. The European countries would welcome participation from other stakeholders in this working group.

MR BURNS deferred to Mr Stofile, who had chaired the government meeting that morning, but he thought that it would be safe to say that the majority of the governments were always willing to discuss, meet and talk about any aspect of the constitution or issues dealt with, but they were fairly pleased with the language there and saw no reason at that stage to take any action or vote or discuss it further.

THE CHAIRMAN thought that, at the government meeting that morning, Mr Stofile had probably raised a matter for the way forward, and that was that there might well be a wish for the public authorities to have a by-law that was simply relevant to the public authorities, and there was perhaps some need to examine that aspect in particular. He also added that, whilst WADA had asked the management to examine the issue and look at removing any ambiguity, assisting and clarifying in the event of ambiguity, there had certainly been an invitation for contributions, but he did not recall a specific resolution to consult with the Council of Europe. He had no difficulties with consulting with anybody, but he did not recall this being the actual resolution. On the other hand, he noted the motion that came from a working group set up by CAHAMA, which was far more wide-ranging in the context of the whole constitution and not simply article 7. Would Europe, in the context of what had been indicated that morning, be happy for the Executive Committee to ask the management to establish a committee to look at the by-laws that might be applicable for the public authorities in this regard, rather than a change in the statutes? It had never seemed to him that there was any particular wish from the sport side to change the statutes. The public authorities seemed to be initiating these matters. Was that the way forward, with a referral to a standing or legal committee? He asked the Director General to give further guidance on this suggestion. He did not want to make work if it was not necessary, but did not want to dismiss the issue if it was of concern to Europe.

THE DIRECTOR GENERAL said that perhaps the management might first write a letter to the lawyers and ask them for a preliminary view so that, if there was the possibility of a by-law that would relate only to one group of WADA's stakeholders, the lawyers could provide that initial guidance rather than WADA setting up a group that would cost a lot of money. If WADA got guidance, this could be submitted at the November meeting, and the Executive Committee could see whether there was a need to go further at that point. There was an ad hoc legal group in place and ready to deal with legal issues. It had dealt with the revised Code the previous year. It was in place, but would not be meeting that year; it would be called upon to meet only if there was an urgent matter to be addressed. Perhaps if he were to report back in November with a letter from the lawyers in Switzerland, this might be satisfactory.

MS KRISTENSEN thanked the Chairman and the Director General for the proposal. She thought that that would be a satisfactory way of moving forward, to have a legal committee look into these issues, and the European countries, through the Council of Europe, would like to contribute to this work. At the same time, the European working group would continue its work and would report back to WADA. Would the issue be discussed at the November meeting?

THE CHAIRMAN asked whether Ms Kristensen was happy for WADA to progress on the basis of seeking advice from WADA's lawyers to be tabled at the November meeting on how the by-laws as they specifically related to the public authorities might be improved to avoid ambiguity, and not engage the ad hoc legal committee until the legal advice was considered; but, it might well be that, at the November meeting, the Executive Committee would ask the committee to take the matter further. The November meeting was only eight weeks away. He was happy to proceed and he thought that the Executive Committee members would concur with that proposal.

PROFESSOR LJUNGOVIST confirmed what had been said, that, from the sports point of view, there was no need for any amendment, but of course the sports side was not against looking into the matter in the way that was being suggested. The sports side was happy as things stood.

MR KASPER said that he was not opposed, but pointed out that WADA was a foundation under Swiss law, and Switzerland was not part of Europe, and the different legal systems could cause complications. There was a Swiss lawyer in the room, which might make things easier.

THE CHAIRMAN thanked the members for their comments. WADA would seek legal advice and proceed on that basis.

#### DECISIONS

1. Approval in principle for further work to be carried out on the GAISF matter, relating to assistance that might be provided to the small federations in the context of testing.
2. WADA to seek legal advice relating to the WADA Constitution and consider such advice at the November meeting of the Executive Committee prior to taking the matter further.
3. Director General's report noted.

#### **4. Finance Report**

##### **4.1 Finance and Administration Committee Chair Report**

MR REEDIE took the members through the various items in their files, starting with the admirably brief minutes of the Finance and Administration Committee meeting, held in Lausanne on 16 July. He specifically referred to the fact that there had been no internal control memorandum issues from the auditors. When PricewaterhouseCoopers went through the books with a fine toothcomb and came back with no comments to make, this indicated that the work was being done well.

The Finance and Administration Committee had discussed the whole issue of government contributions, and had decided that, in the future, it would assume a contribution rate of 96%. This had turned out to be correct, as WADA was already above 96%. As always in finance meetings, there had been quite a long discussion on exchange rates. Everybody believed that they were experts on exchange rates, as they could make a huge difference. He noted from the minutes that Mr Kasper had congratulated him on his confidence in the exchange rates; however, with what had been happening over the past few days, he did not have the faintest idea about what would happen in the future with the exchange rates.

With the assistance of the IOC, the Finance and Administration Committee had also (responsibly, he thought, what with the problems that there had been in the international banking world) specifically asked UBS (WADA's major bankers) for comments on its strengths or weaknesses, and he thought that sufficient information had been received to indicate that UBS would survive, although it had made a number of significant losses in some of its investments, in common with other banks around the world. WADA had looked at its investment portfolio as well. The second bank (Lombard, in Lausanne) was a private bank, and WADA used it to make bond investments, and those bond investments were performing pretty well. That was the basis of the Finance and Administration Committee meeting minutes.

#### DECISION

Finance and Administration Committee chair report noted.

##### **4.2 Government/IOC Contributions**

MR REEDIE said that the updated insert showed that WADA was up to just over 98% and, to his delight, he had found that Europe had paid 100%, so he congratulated whoever had managed to extract the amount of money from the Republic of Moldova, which had never actually contributed previously, so that would go down extremely well the following week in Paris.



MR NIGGLI thanked the countries for their contributions. That year, WADA had reached 98% by September, so this was a record in terms of percentage and timing. The situation regarding contributions was improving every year. He was very pleased and thankful for the timely contributions.

#### DECISION

Government/IOC contributions report noted.

### **4.3 Quarterly Accounts**

MR REEDIE said that the monthly accounts covered the first six months of the year to 30 June. They were there for information only and, of course, showed an enormous profit as a lot of income was collected in the first six months, and WADA did not spend all of its money in the first six months, so it was pretty straightforward. That was exactly the situation. Of much greater use to the members was the second attachment under item 4.3 that compared the actual expenditure in the period with the annual budget, and he commented on a couple of things. Under the income side, members would see quite considerable contributions from the public authorities. The heading was "Other grants", budgeted that year at 275,000 dollars, representing roughly 60,000 dollars from the Government of Australia, 15,000 dollars from CONFES, and 200,000 euros from the French Government, with perhaps a suggestion that WADA use that money wisely and help with the passport development. France had not yet paid this amount, but it was budgeted and he was sure that this would be paid, and he was particularly grateful to the French government, as it had been one of the beneficiaries of the Landis decision.

Looking on the expense side, the one really big difference was the legal and finance page, page two, under "Litigation". WADA was way up on what had originally been thought, and this simply represented the costs of the Landis case. Looking at the minutes, there had been a long debate as to whether to invest that money and meet the costs, and it had been decided after a long discussion that WADA should do so, and he was delighted at the judgement received. It would have been very bad news indeed if WADA had not received the judgement, but somebody had had to appear in court; otherwise, Landis would have won his appeal. It had cost a great deal of money but, at the end of the day, the result had been good. He had felt it appropriate to go to the cocktail party run by the UCI in Beijing on the grounds that he felt he had paid for his ticket.

Under "Standards and Harmonisation", the Finance and Administration Committee thought that the costs under the Code, totalling 600,000 dollars in 2008, might be a little tight. The committee thought that more work was needed than originally estimated, and that the figure should probably be increased. This was a very useful tool, as it was possible to see actually what had been spent compared to budget, and he received these figures each month from Ms Pisani, so he already had the figures for July and August, and knew on a month-by-month basis whether WADA was on track.

#### DECISION

Quarterly accounts update noted.

### **4.4 Revised 2008 Budget**

MR REEDIE said that, as the members could see, the Finance and Administration Committee had assumed that the exchange rate would be 1.08 CAD to 1 USD, and had in fact ended up almost at parity. The effect of these exchange rate differences, when WADA was paid in US dollars and spent in Canadian dollars (and WADA spent a lot of money in Canadian dollars), was that it always looked as if the salaries were running higher than budget. It was almost entirely an exchange rate difference, but the exchange rates changed all the time (it had been 1.04 on Friday with the Swiss franc at 1.09), and the Finance and Administration Committee had assumed parity, so it was a little bit of a guessing game, and he had spoken to Mr Burns to see if he could help but

he could not, because, after what had been happening in the USA over the past three days, with the taking on of zillions of dollars of debt, he did not understand how it would all work out, but it did appear that it would have some effect on US dollar evaluations.

On the income side, WADA was considerably higher than the Finance and Administration Committee had anticipated (over a million dollars higher). A lot of that was 900,000 dollars from previous years, as WADA had collected unpaid contributions from previous years, and that had a limited future as, once the money had been collected, there would not be any more to collect in future years.

Looking at the expense side again, the various items that the Finance and Administration Committee knew were higher included litigation, and the 2008 budget had been put up by 400,000 dollars because of the Landis case. The Finance and Administration Committee actually thought that WADA's legal costs, particularly in Switzerland, were modest. The lawyers there dealt with the CAS applications pretty accurately and efficiently. Looking at the various other items under the "Executive Office", meeting costs and fares went up all the time. Under "Information Technology", WADA needed to upgrade IT development, and there would be a transition cost, which the Finance and Administration Committee estimated would cost 200,000 dollars. Under "Education", there were some additional costs related to the youth programme development, which was necessary for the new Youth Olympic Games. In relation to the "Standards and Harmonisation" costs, ten minutes previously he had said that the costs had been put up to 700,000 dollars, and then the Finance and Administration Committee had budgeted for 600,000 dollars. That was clearly wrong, and was based on the evidence of the first five months. Now that more was known, that figure would have to be amended. The figures under "Operational costs" for rent and taxes also appeared higher as they were also subject to exchange rate differences.

#### DECISION

Revised 2008 budget update noted.

#### **4.5 Draft Budget 2009**

MR REEDIE informed the members that the first attachments under this item related to the strategic and operational plans. They featured what the Executive Committee and the Foundation Board had decided that they wanted WADA to do, so the Finance and Administration Committee took that as the base point and then tried to put figures to it. Again, looking at the income assumptions, the committee had assumed parity between the US and Canadian dollars and parity between the US dollar and the Swiss franc. At the moment, to the Canadian dollar, it was 1.04 and, to the Swiss franc, it was 1.09. Unfortunately, projecting ahead, exchange rates never stayed constant over 365 days. A lot depended on when the movements took place. The Finance and Administration Committee would assume a 96% contribution rate in 2009; having collected 98% that year, it thought that 96% was a cautious assumption. Interest rates were lower, so the Finance and Administration Committee would not take a million dollars in interest on investments, and had reduced the figure by 300,000 dollars. There were no contributions from previous years from which to benefit, as most of these had been collected. On the expenses side, the committee had assumed an overall salary increase of no more than 4.5%; that was down from previous years. Looking at the various departments, for "Legal and Finance", there had been much lower litigation costs (the committee hoped that Mr Landis would not appear under any form), and he had not taken into account the 100,000 dollars that WADA might get if he did reappear. Under the "Executive Office", there were some increases in costs in relation to Interpol, governmental meetings, Independent Observers (coming back into the programme for 2009 as they had not been involved in 2008), the ADO symposium, sports meetings and meeting costs. It simply cost more to go to meetings and travel around the world, as those who did so would understand. Of course, there was a major reduction, as there would be no Olympic Games costs for 2009, and there had had pretty substantial costs in 2008, all of them entirely worthwhile, and he congratulated Ms Spletzer and the

Outreach team, which had been a great success in Beijing at the Olympic Games and an even greater success at the Paralympic Games.

Mr Niggli would discuss IT under a separate item. WADA needed to update the whole system. The committee assumed purchase of the hardware at 600,000 dollars. After quite a lot of discussion the previous day, he guessed that WADA would lease as opposed to purchase, so the up-front purchase in 2009 would be reduced. If WADA purchased the equipment, it would probably have to throw it away in three years' time, as technology would have moved on to such an extent; however, if WADA leased, the total costs would be roughly the same but spread over a three- to four-year period, and that would clearly make a difference to the IT aspect, and the committee would pick that up before finalising it and taking it to the Foundation Board in November.

Under "Information and Communication", it was necessary to develop the website. Under "Education", there were additional costs and tools. Mr Koehler now had the department up and running well, and there were costs and planning for the Youth Olympic Games.

Under "Standards and Harmonisation", the Finance and Administration Committee had marginally reduced the costs of out-of-competition testing. Code approval and compliance now insisted that IFs should have their own out-of-competition testing programmes. WADA had been doing quite a lot to fill in the holes for those federations that had not been very good at it, and would like to target its testing on a high quality basis under contract with IFs or other NADOs, but the committee thought that it should reduce the cost of that overall.

On the last page, attachment 3, WADA had been able to accumulate unallocated cash, and the committee estimated that, each year, WADA would be eating into that cash year by year; those were the assumptions, and the committee assumed certain rates of contribution. These were assumptions for an arithmetical progression, and were not laid in tablets of stone; however, the members needed to understand that, over a period between 2008 and 2012, WADA would end up, given an increase in contributions of 4% in 2009, 5% in 2010 and 5.5% in 2011, at an approximately stable position in 2012. The members should remember that it cost roughly 2 million dollars a month to run the agency, so there would effectively be one month's cash in the bank. He hoped that the Executive Committee was happy with the budget put forward, and that it could go to the Foundation Board on the assumption that there would be a 4% increase in contributions in 2009 and the Foundation Board would have to vote on that in November. The committee would tidy up one or two other points, but that was the situation. As he had said, there were problems with guessing the exchange rate issues. He would be happy to take any questions; if not, he would be grateful if the Executive Committee would generally approve the draft budget, with some minor amendments to be made.

THE CHAIRMAN asked whether there were any questions.

MR BURNS noted, with respect to possible monies and the collection of past dues, that Venezuela had not paid anything, notwithstanding the fact that a seminar had been held in that country and that it had sent a significant number of athletes to Beijing, and he hoped that WADA would not foreclose that avenue of attempting to collect.

MR REEDIE replied that WADA did not give up on collecting past payments, and he was well aware of the Venezuelan situation, but he was saying that WADA could not rely on that money coming in.

THE DIRECTOR GENERAL added that WADA had been in very close cooperation with Venezuela in recent months. There had been a change at the helm of the sports department in Venezuela, and the new director was likely to be a WADA Foundation Board member and knew that, if he was to fulfil that function, he would have to pay up. There was a little bit of arm-twisting going on at the moment and he hoped to be able to report more favourably in November.

MR NIGGLI said that Venezuela had paid 81,000 dollars for 2006, 78,000 dollars for 2005 and 30,000 dollars for 2004.

MR LARFAOUI asked Mr Reddie what the 1.4 million dollars that the Landis case had cost (an astronomical cost) consisted of. In relation to the 2009 budget, the number of out-of-competition tests was to be the same as in 2008 (some two thousand tests). He asked for an increase in the number of tests carried out by WADA for 2009, as two thousand was insufficient compared to what the IFs were doing.

MR REEDIE apologised: he had thrown his earphones on the floor when Mr Larfaoui had asked the first question, so he would ask Mr Niggli to deal with that. In relation to out-of-competition testing, he acknowledged that the number of tests was less than the number done by other IFs, but the Code provisions entailed IFs having their own out-of-competition testing programmes. He greatly admired the work done by FINA and the IAAF, but WADA had never ever been simply an out-of-competition testing organisation. Purely from a budget point of view, the IFs should pick up the obligations that they had under the Code and WADA would target the tests that it organised as effectively as it could in conjunction with those federations that needed the most help, and that did not preclude FINA or the IAAF or anybody else.

MR NIGGLI referred to the figures for the Landis case. The 1.4 million dollars included legal fees, one week of hearings in New York with eight experts brought in to testify, to respond to the arguments made by the Landis lawyers, several thousand pages of documents, translations, and so on. All of these expenses had contributed to the overall costs of the Landis case in the USA.

MR STOFIE pointed out that he and Mr Larfaoui were not questioning the costs. The real issue was, if people litigated against WADA and lost the case, was there any way of recouping some of the costs from the losing litigants? Why should they go to court and lose and nothing happened to them in terms of the costs that WADA incurred because of their action?

THE CHAIRMAN replied that the CAS operated on a rather different principle to the civil courts. The 100,000 dollars was by far the largest award of costs against any applicant to the CAS.

THE DIRECTOR GENERAL said that there was little he could add. He had taken the issue up with the CAS and asked to see costs awarded in more cases where somebody had been more frivolous in the conduct of his or her litigation, and the first sign of some response had been the costs awarded in relation to the Landis case. There had also been other cases whereby WADA's costs had been 5,000 dollars and there had been cost awards of 5,000 dollars.

THE CHAIRMAN said that (and this was no criticism of the US legal system) WADA had raised with the president of the CAS, where the option was available, to hold hearings in Switzerland, which would be beneficial to the expense side of the operations of IFs generally if those cases were held in Switzerland, where the average cost was in the thousands and not the hundreds of thousands.

MS KRISTENSEN thanked Mr Reddie for his comprehensive and interesting report and the draft budget. It was really important for the European countries to have transparency on these matters. From a European point of view, the draft budget for 2009 looked reasonable. On the exchange rate, since the Finance and Administration Committee meeting in Lausanne, the US dollar had strengthened by around 5%, which looked good for the future and, if the dollar kept strengthening, she felt that it might be worth considering the possibility for a decrease in contributions in the future. Europe did not have a problem with the 2009 budget, and it was far too early to think about the exchange rate, but she asked WADA to carefully consider the development of the US dollar.

MR REEDIE was delighted to hear that the European countries were more than reasonably content with the draft budget. The committee had in fact run the figures on

different exchange rate differences. It had done this at 1.03 Canadian dollars to the US dollar, and the difference was about 270,000 dollars, so there would have to be a pretty major swing in exchange rate differences between Canadian dollars and US dollars for it to make a huge difference to costs. He undertook to keep the exchange rate situation under review.

He pointed out, in response to what Messrs Larfaoui and Stofile had said, that the Landis case had been unique, he hoped. Landis had been able to collect a large sum of money by appealing to people in the USA that he was a poor, underprivileged, hard-done-by athlete, and the whole Landis case had been a deliberate attack on the anti-doping system which WADA could not allow to succeed, and it had not, and Landis had not come back. He hoped that it would not happen again. The costs in the USA were outrageously high. It had been a huge contribution from the USADA and WADA, both of which had turned out to be necessary, and he hoped that this situation would not recur. He agreed absolutely with the expressions made that this just cost too much money; however, every now and again one had to fight the battle, and he thought that WADA had fought the battle.

THE CHAIRMAN said that the Landis case would no doubt be the subject of much study in the future. He commented on the behaviour of the lawyers. Many of the witnesses had been called to give evidence in respect of the Paris laboratory. It had been a question of defending the integrity of the Paris laboratory. Many of the witnesses called had not been used, and many of the statements made by the lawyers during the course of the hearing had been totally erroneous. Having read the judgement, he supported what the Director General had said because, otherwise, a process would be established whereby this type of practice would be seen as normal when it came to cases involving athletes. He thought that a line should be drawn in the sand that flowed on from the very strong judgement in favour of WADA and the laboratory; so, as Mr Reddie had said, he hoped that it would be a one-off and that it would never be repeated. Having said that, WADA needed to take advantage of the failure in cost terms to stress that other cases in the future should not go that way.

MS KRISTENSEN noted that she thought she had used the word "reasonable" in relation to the draft budget, and had not said that Europe was "more than happy with" the draft budget.

MR LARFAOUI emphasised the need to increase the number of out-of-competition tests, as this was very important for the IFs.

THE CHAIRMAN repeated the comments made in the Director General's report, and the work to which the Executive Committee had agreed in principle, to try to find another way of assisting the smaller IFs in the conduct of out-of-competition testing, but he acknowledged that and recalled some of the things said during the conference in Madrid. It was very clear, that, if WADA was to succeed in its fight, it would succeed through the surprise of out-of-competition testing. If WADA went back on the statistics, leading up to the Olympic Games, the number of people effectively caught before getting to Beijing showed that a robust out-of-competition testing regime could lead to good results. He did not think that there would be anyone at the table who would not recognise the value; it was how it was managed that needed to be worked on, as it had all the support that it needed, and he appreciated the fact that Mr Larfaoui had stressed the point.

He put the motion that the Executive Committee support the draft budget for 2009 to be taken to the Foundation Board in November on the basis of what had been presented. Did the Executive Committee wish to endorse that budget? He thanked everybody for their support. The Finance and Administration Committee was one of the most valuable resources that WADA had. He was certainly very grateful for the skill that Mr Reddie and his team put into it. WADA had a very good and conscientious team.

#### DECISION

Draft budget 2009 approved.

## 5. Code Compliance

### 5.1 IWF Compliance Issue

THE CHAIRMAN commented that, when the members had met at the previous Executive Committee meeting, this had been a difficult and contentious issue. On that occasion, the Executive Committee had made it clear that the numerous requests for information from the IWF had not been responded to. A resolution had been reached, and it had been decided that he would meet the president of the IWF on the Saturday evening, and he had reported back on the Sunday in the middle of the Foundation Board meeting that, at that meeting, Dr Aján had presented a bundle of documents, which WADA had been required on the basis of natural justice to examine further, and the Executive Committee had deferred its decision. At about 4 p.m. on the Friday before the meeting on the Saturday, the same bundle of documents had been delivered by courier to the reception desk at WADA, so when he had conveyed the advice that he had received that WADA had not received anything before the Executive Committee meeting, it had turned out not to be accurate, as there had been the bundle of documents delivered on the Friday. Having said that, the report was there, and he did not know if any explanation was necessary.

MR NIGGLI thought that the report was self-explanatory. Since the last meeting, there had been numerous interactions to extract a few more documents from the IWF, and he thought that the IWF had come to the conclusion that a DNA test could be done on one of the samples, and WADA was awaiting the results. The IWF still had to provide WADA with a number of test results from follow-up tests; once these were received, the Executive Committee could assess whether or not something might be done based on the results. There had been progress, although there were still some things to be received from the IWF. WADA had been promised by the IWF that it would soon receive the necessary documentation.

DR SCHAMASCH said that it seemed that there was a sport and a government side to the problem. It seemed that WADA might insist on the governments also taking action in this regard as, in some countries, WADA might have some indication for qualification of some part of government authorities, so he felt that the sport movement could do its utmost to solve its part of the problem, but that also some action should be taken at the government level in those countries in which there might be some indication that governments were involved in such practices. The burden should not be placed only on the sports movement.

THE CHAIRMAN noted that this was a very fair comment. The IWF had taken the initiative to write to the Armenian sports minister complaining about the alleged bribery. It had turned out that the sports minister was also the president of the Armenian weightlifting association, but was that the responsibility of the sports side? Maybe WADA should guide and take some initiatives to deal with this at the government level. It was very difficult for a sporting federation to have that same interaction with government. This was not to say that all sports federations should not deal with matters that were alleged to be criminal matters in a very appropriate manner, which was to report them to the appropriate authority. Notwithstanding, he appreciated the comment made.

DR SCHAMASCH asked whether the soon-to-be-signed agreement with Interpol might help. One of the articles had been included to enforce anti-doping rules in the countries but, in addition to that, WADA was unique because it was a sporting and governmental movement and, when it had been created in 1999, it had been because the sport movement had found that it lacked the possibility to act on the government level. The sports side was now facing situations whereby it needed the help of the governments to solve some issues.

THE DIRECTOR GENERAL said that, on a daily basis, WADA referred information to government authorities to take steps where a crime might or might not have been committed. Had WADA had the information in relation to the Armenians earlier, it could

have taken action in this case. However, it had not had such information until 18 months after the event and, once crimes were reported 18 months after the event, the witness recollections were gone. WADA needed the information early to be able to pass it on. It had done that recently in Austria, Germany and Russia. WADA was alert to that responsibility. It did take the steps it thought it was required to do under its mandate. WADA then had to rely on operations at an enforcement level, and that depended on whether there was a law in place, and that led on to Interpol, which could act only if laws were in place in the countries involved. It was an ongoing project; WADA was very alert to it and would progress it.

DR SCHAMASCH responded that it would be useful for WADA to communicate this to the IFs; the IFs should report as soon as possible so as to prevent what had happened in the case of Armenia from happening. Such communication with the IFs would help everybody to work more rapidly.

THE CHAIRMAN said that this was a constructive suggestion that WADA would take on board. As to those in Armenia relating to bribery, accusations or allegations, it was far too long ago and that needed to be dismissed. Coming back to the paper, looking at the conclusions on the last page, WADA was hopeful that there would be a final report from the IWF, excluding the bribery issue, so as to have the complete knowledge that WADA had been seeking. Should that be the case, the Executive Committee might well be able to vacate the decision taken the previous May and nothing would go forward to the Foundation Board as a result. Were the members happy to proceed along those lines?

MS KRISTENSEN made a general remark. She was pleased to get to see the interim report at this stage. The conclusions in it were not impressive and there was still a way to go until November. The goal was clear: WADA should have as many Code-compliant countries as possible. This called for a good balance between positive motivation and a certain amount of pressure on the non-compliant countries in question.

THE CHAIRMAN said that he would leave it on the basis that this would be discussed further at the November meeting.

Prior to the coffee break, THE DIRECTOR GENERAL showed the members a corporate video put together by WADA.

#### DECISION

IWF compliance issues noted; further consultation to take place at the November meeting of the Executive Committee.

## **5.2 Code Compliance Status Report**

THE CHAIRMAN noted that WADA was required to provide a report on Code compliance in November and, at each of the meetings in recent times, there had been a status report. This particular journey was coming to an end, but there was another status report and he asked Mr Andersen to make some comments before opening up the discussion.

### **5.2.1 Compliance and Monitoring Strategies**

MR ANDERSEN asked the members to look at attachment 1, the revised version of the chart, and paper 5.2.1c, the two new documents to which he wished to speak. First, however, he reported on the tremendous efforts made by the WADA staff in terms of getting rules into place to review the rules from many stakeholders and signatories. This had led to an increased use of lawyers, to review rules, and this was why his department might be somewhat short of cash at the end of the year. It was a positive thing that WADA was reviewing so many rules. Looking at the chart, the Olympic Movement and IFs were doing quite well and the figures in brackets were those that had been submitted in May, so progress could be seen in that respect. In terms of the IFs, there was the out-of-competition testing compliance issue, and there were issues, as the members

would see from the figures, relating to which and how many IFs were actually carrying out out-of-competition testing. Moving down to the NOCs (the red line on the chart), there had been quite a comprehensive increase in the numbers. Looking at rules received, 48 sets of rules had been received in May and, by 17 September, 129 sets of rules had been received. Looking at the rules in line with the Code, 63 now had rules in line with the Code compared to 20 in May, which showed that the commitment from the NOCs was there and WADA was continuing to work with them. In terms of NADOs, good progress could also be seen. WADA had now received 84 sets of rules compared to 53 in May, 50 of which had been declared as being in line with the Code.

As the members would have seen from the paper, the recommendations were intended to trigger some discussion. After discussing this the previous day with the WADA management team, some recommendations were proposed in the revised version of 5.2.1c. The first was to continue to assist stakeholders as had been done to date, but to emphasise that this was only for the first round, as this was the first report being submitted to the Foundation Board in November. The second was that the NADOs and NOCs were deemed to be part of the RADOs and they would be deemed in compliance with the Code if they were highly committed to the process within the RADOs. Thirdly, in terms of defining extraordinary circumstances for excusing those signatories that WADA could not expect to have gone through the whole process, he proposed that political considerations, which might be political unrest, economic aspects and sporting records in those countries, be taken into account. Some countries might have very few athletes participating in major events, and he suggested that this be taken into account when looking at extraordinary circumstances. Fourthly, some principles were proposed, that if one did not comply with all aspects of the Code, one at least needed to have some provisions fully compliant with the Code (which included what constituted anti-doping rule violations; sanctions needed to be 100% in line with the Code; WADA had the right to appeal cases to the CAS; there was an out-of-competition testing programme in place; and that the international standards had to be adhered to). The final suggestion was that there should be a timeline in place. The management had not come up with any proposal in that respect as the revised Code would go into force the following year, and it was hard to put a timeline on the current Code for the following year. The main issue was that WADA should not be complacent; WADA should tell its stakeholders that this was its first report and that it was trying to be constructive. When it reported in 2010 on the 2009 Code, the full Code would apply for that process.

MR KASPER referred to the chart. There were the Olympic IFs, the Recognised Federations and then GAISF members. He knew what Mr Andersen meant, but perhaps the wording should be changed, as all those recognised federations were GAISF members. He had one other question, relating to the issue of Code compliance in November. On 1 January 2009, the new Code would be coming into force, so the compliance report would be valid only until 1 January as, from 2 January, everything would be completely different. It made things somewhat complicated. Some IFs thought it was necessary to be in compliance with the 2009 Code already, and others did not.

PROFESSOR LJUNGOVIST referred to point 5 in document 5.2.1c. He thought that this was coming back to the philosophy of the compliance work, which was to assist and identify problems and assist ADOs to become compliant. It was perhaps unnecessary to say, but it was an important philosophical approach to the work.

THE CHAIRMAN recognised that this was a dilemma and was difficult. There was a clear obligation to report to the stakeholders on compliance. It was then a matter for the stakeholders as to what was done. In that regard, WADA simply gave them the facts and they made the decisions. Mr Kasper had hit on a point. One of the South American countries had made it clear in the discussions that Mr Andersen's team had held with it. Why should it make all of this effort now when there was going to be a change on 1 January? The management had looked at the fourth point, which might be described as core obligations, but to try and leave a little bit of room for minor non-compliance, and he indicated, without wishing to embarrass any particular country, that Great Britain was



currently running a little short on some very small rules, and he was sure that the matter would be resolved shortly; but, having said that, Great Britain could well be deemed non-compliant if it did not resolve the matter, which was just silly, so the management had looked very hard to try and find a way to get as much support as it possibly could to enshrine some core obligations and effectively acknowledge without saying it that the obligation was not in any way watered down, but WADA would certainly not want somebody saying that it was all too damn hard and deciding not to do it. So, in that context, there was a bit of carrot and a bit of stick, and WADA was trying to find the accommodation. That was his two cents' worth of the previous day's discussions, which had been fairly interesting.

MR REEDIE read a short paragraph from the BOA lawyer, which said: "Finally, for your information, I have been in dialogue with WADA on the drafting of the BOA's anti-doping rules. These are being progressed, although I do have some concerns on some of the fine print. I hope that we may have something to put to the NOC in a few weeks. I have told the WADA European office; but, if anybody does ask you, please assure that the BOA is attending to it". He hoped that this put the Chairman's mind at rest.

THE CHAIRMAN said that he should have known that Mr Reddie would have a lawyer's letter!

MR REEDIE spoke for the NOCs and rather strongly supported the suggestion made that, if the smaller NOCs were part of a RADO, that was the mechanism for declaring them compliant. Looking back to 2003, the NOCs had thought that they were being helpful by saying that they would take on the responsibility if there was no NADO, without remotely understanding the complexities of the problem. The hard reality was that most of the small NOCs had neither the finance nor the facilities and the ability to do it; so, unless WADA did something like this, it would end up with a large number of one of the constituent parts of the Olympic Movement legally declared non-compliant, and WADA really did not want to do that, as they were not that seriously at fault, so he thought that this was a pretty wise suggestion.

MR KASPER wished to avoid giving the national associations, international associations or NOCs the feeling that there was some witch-hunting going on from WADA's side. WADA should help them but not give them the feeling that it was witch-hunting.

THE CHAIRMAN assured Mr Kasper that nobody wanted that to be the outcome. This was a status report and was a guide to the report that would be submitted in November, in the context of how the report might be prepared for the approval of the Foundation Board. If it did bring that level of compromise in a sensible way, WADA had to fulfil its obligations as an organisation under the charter; on the other hand, WADA needed a sensible and practical outcome that did not act as a deterrent to any organisation to say that it was all too hard. If the members were happy on the basis of the work put into the paper, this would be the way in which the report would be prepared for further consideration in November.

MR ANDERSEN wished to demonstrate the complexity that WADA faced from time to time when dealing with Code compliance for some countries, and this was probably an extreme example from Belgium, triggered on 5 September when WADA had received a request from Belgium to add additional substances to the list of forbidden substances, because Belgium had not signed the Code so wanted to deviate from the List and have substances that were forbidden only in-competition to be forbidden also out-of-competition. The situation was quite complex in Belgium, as there were three societies, the German, the Flemish and the French, as well as the city of Brussels, each with its own NADO, an NOC that had accepted the Code but had no rules in place. The Flemish community had not accepted the Code but had rules in place, and in addition had a WADA-accredited laboratory, whereby the criteria for accrediting and re-accrediting the laboratory included the acceptance by a NADO of the Code, while the French and German communities had not accepted the Code and had no rules in place. He supposed that the

members had no answer to this, and he was not asking for clear direction, as it was pretty complex, but this was what WADA had to deal with. WADA had frequently requested acceptance, but this was the situation in Belgium.

THE CHAIRMAN acknowledged that it did indicate the complexity of the issue. He had thought that it might be necessary to find a special ambassador, who might also be the President of the IOC, to go and sort out the situation, but if that was Mr Andersen's wish, he would delegate the task to the Vice-President!

MR REEDIE said that he had tried to get his mind round Belgium for the past ten years and failed. He had always been told to believe that Brussels was the only city in the world where one could not be tested. Had that changed?

MR ANDERSEN replied that the Code had finally been accepted, so one could be tested in Brussels and there was a NADO in place, but there were problems as there were no rules in place.

MR REEDIE regarded this as significant progress.

MS KRISTENSEN clarified that she had been in contact with the Belgians, and wanted to make sure that WADA had received information from the Belgian Government.

MR ANDERSEN said that he would be interested to know from whom in Belgium and what the Belgian Government meant. Was it the Flemish, Dutch or French government? Or the city of Brussels? It was different, as there were some ministries for the whole of Belgium, and then it was separated into different communities.

MS KRISTENSEN replied that she thought it should be the Flemish, but she could check up on that. It was important to be sure that there was the necessary communication.

THE DIRECTOR GENERAL suggested that maybe the Council of Europe could be of help, as the Flemish Government was proving to be the most difficult, and had a law in place that was not Code-compliant, by insisting that the Prohibited List was not the WADA Prohibited List. If that could be overcome quickly by their adhering to the Code in the appropriate way and adopting the Prohibited List as they said to the Council of Europe that they did, then WADA could be home free. The problem then led on to the laboratory, as the laboratory was breaking the WADA rules by agreeing to analyse pursuant to this wrong list. There was a downstream problem, which was quite significant, and it could not just be put to one side. WADA had to address it and would have to write strong letters to the laboratory and the Flemish Government to say that this should be straightened out because, if not, the situation would go on and on.

THE CHAIRMAN asked whether the Council of Europe might help, if the strong letters were followed up with an explanation of the problem.

MS KRISTENSEN thought that this might be possible and said that she would take the information back and deliver it to the Belgian authorities. She would do what she could.

THE CHAIRMAN said that this was a demonstration of the complexities that the management sometimes ran up against.

PROFESSOR LJUNGQVIST agreed that this was a matter for the government side to deal with, but said that a courtesy copy to the IOC president would be reasonable.

THE CHAIRMAN said that this would be done.

#### DECISION

Code compliance status report noted and procedure approved.

## 6. Science

### 6.1 2009 Prohibited List

PROFESSOR LJUNGOVIST informed the members that the List Committee had met some ten days previously and made a proposal to the Health, Medical and Research Committee in accordance with the WADA Constitution. The Health, Medical and Research Committee had made some adjustments and amendments, and the proposal was in the members' files. Following further discussion, an amended version had been tabled that morning. He took the members through the significant changes compared to the previous year's list. The first slide related to the introductory text. As of 1 January 2009, all prohibited substances would be considered as specified substances, except substances in certain classes, and they were listed. This was to clarify the matter. There had been discussion as to whether "specified substances" was the right terminology, but people were used to this and he proposed not to change the terminology. It related to the penalties that could be imposed following violations including specified and non-specified substances. That was an important text. The next page showed that the epitestosterone had been moved (merely a cosmetic issue) from the earlier position as a masking agent to anabolic androgenic substances, which was its chemical home. Also, in relation to the text following the androgenous substances relating to analysis and interpretation, the committee had considered moving it to the technical documents, but had decided to keep it there because of the UNESCO convention and it remained as comments to class S1D in accordance with the Code.

On the next page, under "S2 Hormones and Related Substances", the term "erythropoietin" had been modernised to include "erythropoiesis stimulating agents", because it was not just standard erythropoietin any longer (the members would undoubtedly have read about different generations of erythropoietin), so this would cover erythropoiesis stimulating agents, which were increasingly present in the pharmaceutical industry.

On the next page, there was an important matter, the beta 2 agonists, which had provoked a long discussion by the List Committee and the Health, Medical and Research Committee, and the outcome could be seen in the paper. It had triggered substantial debate due to the fact that the abbreviated TUE procedure was done away with, so either there was the full TUE or no TUE at all. When the TUE standard had been approved by the Executive Committee, it had been understood that beta-2 agonists would require a full TUE. The List Committee in particular had sought to make the administrative burden lighter for the NADOs, and to see if it could allow the inhalation of beta-2 agonists without the need for a TUE, because that was where they had a medical indication and would be allowed, but it had turned out that the necessary background was not available to be able to differentiate between inhalation and systemic administration of beta-2 agonists. They could serve as anabolic agents, so represented quite a serious doping offence. There was a threshold that could be used for salbutamol, which was quite a common drug, and that had been on the List for some years. 1,000 nanograms per millilitre was the cut-off level, which could not be reached by inhalation, so if a person knew that he or she was only inhaling salbutamol, he or she did not need to apply for a TUE. If one went above that level, even with a TUE, it would be a doping violation because, at that level, there would be an anabolic effect and TUEs were not allowed for anabolic effects. The problem was that there were no cut-off levels for the other beta-2 agonists, which was why it was necessary to stick with the original idea, to require a full TUE for all of the beta-2 agonists, and this would be combined with further studies into the possibility of arriving at cut-off levels for the other beta-2 agonists as well. Then, WADA would be in a better position to lift the burden of TUEs for beta-2 agonists. This was a health issue to some extent, and it was probably not the right time to go into this, but, at the IOC during the Olympic Games, a mechanism was in place to make sure that people inhaling beta-2 agonists had medical indications to do so and a properly established asthma diagnosis. Many people using beta-2 agonists believing that they

were asthmatic had been rejected, and it had turned out through research in New Zealand and Australia that overuse of beta-2 agonists could be harmful and contraindicated, resulting in less effect, so it was counterproductive to use beta-2 agonists if they were not needed. They should be used temporarily and not for chronic use, and the right inhalation procedure to treat asthma was to use corticosteroids, so the recommendation was to say that all beta-2 agonists including isomers were prohibited and that, therefore, inhalation with beta-2 agonists required TUEs. There had been some quite good research applications relating to this problem, namely beta-2 agonists and anti-doping, and some of those projects had overlapped, and some were not of major importance or interest, but the interesting part was that there were quite excellent teams wishing to help WADA in the field of beta-2 agonists, so the Health, Medical and Research Committee had taken proactive action and would set a large sum aside, and would approach those teams to help arrive at cut-off levels for beta-2 agonists to be able to move on in a practical way in the future. The committee was recommending 600,000 dollars to be allocated to the research area of beta-2 agonists. This was why the text had been proposed, that "formoterol, salbutamol, salmeterol and terbutaline, when administered by inhalation, would also require TUE". The committee strongly recommended that TUEs be required for the inhalation of beta-2 agonists. In diuretics, the committee had added a substance known as mannitol, which was also being used for asthma provocation tests, so mannitol would be accepted for that purpose but not as a masking agent. The committee had also removed the so-called alpha-reductase inhibitors, which had been discussed at the table earlier (finasteride and others). Science had advanced, and now there were different ways of identifying whether or not a masking effect had been attempted, so it was no longer necessary to include alpha-reductase inhibitors. The committee had then added a few substances to diuretics.

Moving on to M2, there had been repeated requests for clarification regarding intravenous infusions. Were they really banned in the event of an urgent surgical intervention? Of course, they were not, so the committee had tried to clarify the matter in a different way, saying that intravenous infusions were prohibited except in the management of surgical procedures, medical emergencies or clinical investigations. The scientists were now happy with that phrase. In relation to "M3 Gene Doping", a second paragraph had been added, including substances that were not familiar, but that had been found to be performance enhancing in recent research in genetics and gene therapy, and this was a response and an example that WADA was actively responding when science moved forward. The only debate had been where to place the substances, and, since they did have an effect on gene expression, it had been felt that, at least for the time being, the right place for them was M3.

The following page was also important. It was the result of a request to identify strong and mild stimulants, to clarify what stimulants should be regarded as specified substances and possibly result in a lesser sanction, and which were non-specified, and therefore strong stimulants. This was no innovation. His own federation had had this differentiation before adopting the WADA Code, so it was possible, and he was sure that FINA had had the same, but the WADA Code had not had this till now, when it was clearly splitting up the stimulants between specified and non-specified substances. The teams of experts had identified those that should be regarded as strong stimulants (under S6A), and the milder ones (under B). On the next page, there was an important matter to be explained, namely S9. The members had seen a text on the right-hand side that was now deleted, relating to attempts not to unnecessarily burden the stakeholders with administrative work until there was a solid round of consultation completed. The List Committee and Health, Medical and Research Committee had not been fully unanimous, but the end result was the one that could be seen in the right-hand column of the amended version. It was an attempt to respond to recent research findings, that indeed there was a possibility of using injections, local injections of glucocorticosteroids that might actually have systemic effects, and there had been an attempt to cover that by identifying cut-off levels for various types of glucocorticosteroids. There had been very clear responses to this from important stakeholders, saying that this was such an

important change compared to the List as it had been circulated when responses had been sought, that it should have been done through a proper consultation procedure. This was more of a procedural than a scientific matter. He could also agree that it would be better to have a little more solid science than there was to date. He thought that, if a decision were to be taken to stay with the wording in the current Code, it would just be a cosmetic amendment due to the fact that the aTUE had been done away with, so the text would be modified, but the content of the text was to remain the same, so the important change would not be made and the stakeholders would deal with glucocorticosteroids as they had done to date. The List Committee and Health, Medical and Research Committee should be commended as they had tried to respond quickly to new science and incorporate it in the List. Local corticosteroid injections had been accepted, but intravenous or systemic injections were not accepted. It had now been shown that it was not that easy to differentiate between the two. For instance, injections of corticosteroids into a joint for a joint disorder would actually have systemic effects as the joint tissue would absorb the glucocorticosteroids into the bloodstream, resulting in systemic effects. Periarticular injections (in the vicinity of a joint) were very common sports medicine interventions, as were injections in tendons, close to the joint. Sports injuries often resulted in this type of acute intervention, and people working in the field of sports medicine had said that they could not differentiate between intraarticular and periarticular injections, as periarticular injections of corticosteroids would also reach the joint and have systemic effects. That was why the original proposal had been to ask for TUEs for everything relating to glucocorticosteroids, and that was a dramatic change compared to the List as it stood today, and it should have been within the consultation process in the summer; but, at the time, the scientific information had not been available. Therefore, he proposed adopting the text as it was in the new version, which was simply cosmetically amended as the aTUEs had been done away with, and local injections should simply be declared in accordance with TUE standards. On the final page, some federations had included alcohol on their lists, and WADA had now standardised the permitted concentration to 0.10 grams per litre. Also, under beta blockers, WADA had accepted a request from the International Golf Federation to have beta blockers included on its list.

This concluded his attempt to explain the matter.

THE CHAIRMAN thanked Professor Ljungqvist, noting that the non-scientists struggled but had great faith in Professor Ljungqvist and his committee.

DR SCHAMASCH thanked Professor Ljungqvist for his brilliant explanation. As a former soldier, he was well disciplined and would follow these recommendations; however, as a physician, he did not agree. He and his colleagues would follow the recommendations but hoped that the next consultation would take into consideration not the administrative problems, but the scientific and medical problems. WADA should not stop the fight against doping in sport simply for administrative reasons. In the next consultation, WADA should insist on feedback from physicians and scientists, and not only administrations.

MR STEEL passed on Mr Cosgrove's best wishes and apologies for not being present. He had just returned from the Paralympic Games in Beijing, which had been wonderful, and he congratulated the IPC and BOCOG on what he had experienced. Without giving away what the Independent Observer report might contain, the certainty that the Code provided to most elements of anti-doping and the value of ADAMS had been very well demonstrated at the event. With respect to the List, he congratulated the committee on the very good advances made. It was extremely helpful from a number of points of view. His organisation had written to WADA, having seen the draft provided for the meeting, and the minister had seen it too, and had been dissatisfied for two reasons. It was felt that the change was of a level of significance that required consultation and, contrary to Dr Schamasch's intervention, there had been an issue of another layer of compliance. Mr Andersen's report already referred to the challenges that so many organisations experienced in complying with the Code, to the point where compliance

alone was the objective and not an effective anti-doping programme, and it was necessary to move beyond that, so that compliance was simply a step towards really working hard at having effective anti-doping programmes, and so, even for organisations that were relatively well resourced, if they had the opportunity to take away 75% of the resources put into TUEs, and could put that in to steroid profiling and the athlete passport, they would make a huge advance in getting to the core of doping. He thought that it was necessary to make judgements about the core of doping and how it could be reached most effectively, and what might be deemed legitimate but was really at the fringe of the real problem. Those were the two points of objection, and he recalled the appreciation his organisation had for the manner in which this had been addressed. He understood that it was on the table, and had not been solved; but, as they moved forward, those issues were important to his organisation.

MR BOUCHARD wished to make a point of clarification. He did not oppose the List but, because the List was annexed to the UNESCO convention, Canada would have to undertake official proceedings for the acceptance of the List. That was just for the record. He did not oppose the List or the modifications; but, with respect to any annex to the UNESCO convention, it was necessary to go through procedures.

MS KRISTENSEN flagged a procedural issue. The List was core business to everybody working in anti-doping, and she understood that it needed to be approved in order to enter into force on 1 January 2009. Europe had been deeply concerned to receive the documents very late. It was important to prepare and consult with experts in order to have a basic view on the List and have the necessary dialogue. Therefore, it was important to receive documents at least three weeks prior to the meetings. This applied to this agenda item and also to the previous agenda item (as a document for decision had been presented at the meeting itself), as well as to item 6.2. She hoped that this would be taken into account in the future, and she was aware that this was a practical issue for WADA to tackle in order to solve the problem.

PROFESSOR LJUNGQVIST responded to Dr Schamasch, and knew that his opinion reflected that of many people practising in sports medicine clinics. The proposal to stick with the text was an example of the dilemma that science moved ahead quickly, new information came along and he wished to incorporate it, but it was necessary to respect the consultation process and not take stakeholders by surprise. That also went for the comment from Ms Kristensen, that it required some time. The List Committee met early in the year to consider changes for the next year's List; the proposal was circulated over the summer period, which constituted the consultation process. There was then a meeting in early September, once everybody had come back from the summer holidays, and then the committee finalised the proposed List, which came for decision to the Executive Committee to be decided upon before 1 October. If WADA wished to move earlier, he could not see how that could be done, as the work started at the beginning of the following year, and the consultation process was important. That was why it was impossible to immediately incorporate new information in the List, because such information came after the consultation process, so it was necessary to defer until the following year. He would write a letter to the Health, Medical and Research Committee members to tell them that, for procedural reasons, this would have to be considered the following year, hopefully with even better scientific background for the proposal. He had difficulties in seeing any alternative procedure that could enable a proposal to be made earlier than at present.

DR SCHAMASCH responded to Mr Steel. He fully agreed with Professor Ljungqvist that this was a procedural issue. He alerted people around the table that WADA should be careful not to lower its guard and be more lenient with substances that WADA might feel were inefficient. It was fine to focus on "heavy" products such as anabolic steroids and EPO, but WADA should not lower its guard regarding those substances that had been put on the List for a reason and that were still being used for doping. In most of the police seizures, glucocorticosteroids had been found with other substances. It was fine

to focus on more important substances, but WADA should not lower its guard for the other substances.

PROFESSOR LJUNGOVIST said that this was an interesting discussion and it was very informative, particularly for those members who had not been round the table some years earlier. There had been a proposal some years ago to do away with glucocorticosteroids (in other words, to allow them), but this had been rejected, and so it had been necessary to take the rejection on board and cope with the request of the stakeholders. WADA was in the hands of reality and had to deal with this.

THE DIRECTOR GENERAL said that the management was looking at the issue with the anti-doping organisation symposium to take place in April 2009. Looking at the figures for the previous year relating to the number of adverse findings for glucocorticosteroids and beta-2 agonists, almost every one had been covered by a TUE. There was an administrative system covering the findings and, at some stage it would be necessary to work out whether WADA was spending a lot of money on an issue, which might be a good scientific and medical issue, but might not really be advancing the fight against doping in sport. This was the area that should be looked at quite carefully to make sure that money was being spent on the problem and not on an industry. He would raise that for discussion the following April at the symposium.

THE CHAIRMAN asked the Executive Committee to approve the 2009 WADA Prohibited List.

#### DECISION

2009 Prohibited List approved.

### **6.2 Research Projects 2008**

PROFESSOR LJUNGOVIST stated that 75 project applications had been received in May, and the researchers had represented 24 different countries from four continents. In his view, it was encouraging to note that 73% had been submitted by leading researchers in centres other than anti-doping laboratories, meaning that WADA was increasingly being recognised in the scientific community outside the anti-doping framework. There had been 47 projects submitted in 2007 and 45 in 2006, so applications were increasing and WADA's recognition was greater. That was important as it meant that WADA would have more and more projects that were long-term projects; people knew that there was a stable foundation and a stable fund and, if successful, they could also apply to continue the projects. Every year, a list of priority areas was established, and this was modified as time went by and needs arose.

There were 20 projects in the category for the detection of classical analytical methodologies, 16 projects in the category for the detection of immunological and biochemical methodologies, 20 projects in the category for detection using novel methodologies, 6 relating to novel substances with doping potential (a new category, as it had been noted that the pharmaceutical industry was producing new substances that might have doping potential), and 13 projects relating to pharmacological and physiological studies on doping substances and methods. All in all, it was a good spread. All of the projects had been submitted for review by independent panels of scientific experts. It was not that easy to recruit suitable panels, but he was happy that people responded favourably, although that year there had been one late drop-out, meaning that the consultation process had been reduced in one of the fields. All of the projects had been or would be reviewed by ethical review panels before the signature of any contract with the researchers. There had been a review on 9 and 10 September, and the recommendations were now presented for approval by the Executive Committee. The projects had been selected out of the 75 projects submitted, worth 27 or 28 million dollars. 30 projects had been approved for a total of 5.72 million dollars, representing a 40% success rate, which was actually pretty high (although it had been slightly higher the previous year) for a fund such as this one. He asked Dr Rabin to explain the projects now proposed for approval by the Executive Committee in greater detail.

DR RABIN said that 75 projects had been submitted to WADA, entailing a lot of reading to extract the best and most appropriate projects, and those most applicable to the fight against doping in sport, and he was pleased to inform the members that a presentation would be made in November to indicate the outcome of seven years of research conducted under the auspices of WADA to give them some idea of the achievements being made. That year, eight projects really applied some pronomic and genomic techniques for the detection of DNA insertion. These eight projects aimed to detect some DNA insertions relating to the next generation of blood stimulating agents. Another important issue was blood manipulation, in particular autologous blood transfusions, one of the most difficult challenges currently being faced, and a project on integrating all the information into an IT system, enabling the extraction of key information from the projects. In addition to the detection of DNA insertion, it would be possible to use genomic and proteomic technologies to help in the detection of hormones administered to the body. There were eight projects looking in particular at EPO (which remained one of the most powerful or efficient doping agents), hGH and its related hormone, IGF1, and finally luteinising hormone, which was known to stimulate testosterone production.

In the next group, there were four projects, aiming to apply mass spectrometry detection to hormones. The technology was progressing extremely rapidly, and there were currently increasing numbers of research teams trying to apply mass spectrometry technologies to the detection of hormones. This was a formidable challenge when looking at the very small amounts of these products that circulated in the body.

Also in relation to mass spectrometry, but more for the detection of isotopic drug profiles, there were three projects improving the analytical quality of IRMS application and, as the members were aware, in the Landis case, for example, or a number of other very prominent cases, IRMS had been used to demonstrate doping. There was also a complementary and interesting approach, not only looking at carbon, but also looking at hydrogen isotopic signature to reinforce the carbon application for IRMS. As mentioned previously, there had been three interesting projects investigating beta-2 agonists, particularly in relation to thresholds. There was currently a very solid threshold for salbutamol, but it was harder for the three other inhaled beta-2 agonists, so it was something that was proposed by those teams, as well as applying new analytical methods, and how to use those new methods to improve on the detection of those drugs. The idea had been to combine the three groups and, instead of having three smaller groups working independently, the objective was to have them working together to have a more comprehensive approach. There was still the issue related to autologous transfusion, and this was being worked on very actively. It was probably one of the most challenging areas, but there was progress being made and he hoped to see significant changes over the next year or two. There were also miscellaneous projects. One focused on the ethnic, environmental and gender impact of anabolic steroids. This was particularly important in relation to steroid profiling. Moving ahead in this area, there were still elements to be fine-tuned in order to be more sensitive in the way in which steroid profiles were looked at. Also in support of steroid profiling, there were certified reference materials, which were needed by the anti-doping laboratories to have the most accurate determination of steroids in urine. In order to do that, it was necessary to compare results with well-defined and internationally approved reference material so as to have the most accurate result possible. There was also a project using nuclear magnetic resonance to detect designer steroids, which was an issue particularly related to the BALCO case, but something that could also happen in the future. Finally, there was a project looking at a class of substances that did not currently feature on the List, anxiolytic drugs and their performance-enhancing possibility in archery.

In parallel with the grant process, part of the budget was set aside for two areas, targeted projects, which allowed the WADA scientists, following approval by the WADA President, the Health, Medical and Research Committee Chairman and the Director General, to approve projects of particular interest. That year, there had been a project on the detection of CERA, which was a new form of EPO. During the Tour de France, the



first cases of CERA had been reported. This was extremely important, as it showed that one of the activities in WADA, to try to anticipate new substances coming into the field of doping, was bearing fruit. Discussion had begun with the pharmaceutical company making CERA four years previously, and WADA had been able to catch the first athletes using the drug very shortly after it had been made available on the market in only a couple of countries. This just showed how reactive WADA was becoming. It entailed a great deal of work, but significant results were being achieved.

There was also a better characterisation of EPO effort profiles, which would now probably enable WADA to make recommendations for better criteria for the detection of EPO in the weeks to come. There was support to the implementation of hGH and hGH markers, which also took up a substantial amount of resources, particularly human resources. There were new technologies applied to anabolic steroids to define new and long-term metabolites of anabolic steroids to improve on detection windows. This was something that had been seen in Athens, and something that was coming with new technologies, and it was hoped that it would be possible to identify some long-term markers of anabolic steroids. Also, in support of the current activities, looking at the detection and improvement of parameters to allow for the reintroduction of pseudoephedrine on the List, there had been a support activity from the laboratory in Montreal to do some dosing of pseudoephedrine in urine. There were two reactive projects. Dynepo, which was a new form of EPO recently released on the market, was to be removed from the market at the end of the year (this was information from the pharmaceutical company), and WADA wanted to do some excretion studies in order to capture the unique profile of the drug before it was taken off the market. WADA was still working on hGH markers, which he believed would complement the current hGH test that had been developed over recent years.

In terms of finance, the total budget that year had been 6.58 million dollars, mostly for the grants, with a proportion kept for targeted and reactive research proposals. WADA was spending most of its money on short-term and mid-term projects. After one or two years, it should be possible to see the outcome of this research. Three years was more exceptional but also indicated the fact that WADA was still addressing some long-term issues.

THE CHAIRMAN asked whether the members had any questions.

MR REEDIE said that it had been one of the real success stories of the agency that WADA had created an identity in the scientific and research area and should continue to do so. However, he asked Professor Ljungqvist and Dr Rabin about the November review. Was that an in-house review or would there be an outside figure who would come in and help with the review to get another independent opinion, as he thought that responsible people should look at the investment that had been made in research and get some idea of whether the decisions had all been correct. His guess would be that some of them had not been correct, and he thought the members needed to know. That was just a guess; he had no idea. Until that information was available, it would be impossible to argue with Professor Ljungqvist and Dr Rabin, as they actually said that they were going to cure the problems of the world and he believed them; however, he would like to know if they had.

DR RABIN said that the initial objective was to present as much information as could be extracted internally. He would welcome an independent research audit if this was what the members wanted. WADA was open and transparent. He assured the members that the recommendations of the projects approved by the Health, Medical and Research Committee were conducted by an independent panel of three to four independent researchers looking at every single application in a domain and making their recommendations to the Health, Medical and Research Committee. Having said that, research never delivered 100%. That was the nature of research. However, he could assure the members that, when money was wisely spent in research, it generated more profit than it cost. In November, he wanted to give the Executive Committee a view of

what had been achieved in research over the past few years. If, after this presentation, the members wished to conduct an independent audit, he would welcome that.

THE CHAIRMAN said that all of the members were keen to see that there was value for money and accepted the fact that some research did not bring about the results that might have been hoped for. WADA had spent 34 million dollars since its inception on research and it was entirely appropriate to look and see just how everything had worked out.

There was a principle that he thought should be applied: WADA had a budget every year for research grants and, in most years, WADA seemed to get more applications than it actually had money for. The important thing was that WADA have proper objectives when granting funding for applications, and that the members believe that the research was in the areas that they believed would be of assistance and value to the work that they sought to do. He asked for approval on this particular aspect: should the Executive Committee decide in any given year that the quality of the applications did not warrant the spending of all of the money, it should feel free not to spend all of the money on the clear understanding that the money would not be lost. During his days in government, there had been an attitude of "unless you use it, you lose it". If there could be a clear understanding from the Executive Committee that, if the money was not spent because it did not fit with the objectives set in one given year, it might be that the following year there was enough money to grant for those areas in which there were objectives. Secondly, it was also clear that, in some of the sociological areas, more research should be done, and there was absolutely no doubt in his mind that, from the public authorities' point of view, if WADA was to progress the education of young people, the empirical evidence should be available to do some broader research into attitudes of children, accessibility in one country versus another, and, for example, the impact on paying Greek medal winners 150,000 euros (did that add to the temptation? What did it mean in the context of those countries that did not offer anything?). He just wanted to flag this issue and seek the members' approval that perhaps more work should be done in that area.

In summary, the first approval he sought was that the research budget would not have to be spent and would not be taken up if it was not spent in any given year. Obviously, it would not just sit there indefinitely; it was necessary to have focused research grants that would assist WADA rather than just the principle that, because there were more applications, WADA would spend all the money that it had in any given year. Were the members happy for WADA to proceed along those lines? It would certainly assist him and the management, as well as the committee when looking at applications for grants.

Before breaking for lunch, the Outreach team had been in Beijing conducting the Outreach programme. Ms Spletzer had been very happy with the support given by the IOC and the location of the booth. He had noted enormous interest from the athletes, all seeking to win the ultimate in prizes, one of the hats that could be seen on the table.

MS SPLETZER informed the members that a short video had been put together, summarising the success of the programme and how many athletes had visited the booth during the Olympic Games and the Paralympic Games.

#### DECISION

Research projects 2008 approved. Proposal to carry over research budget to subsequent years if so desired approved.

### **6.3 Updated Criteria for WADA Laboratory Accreditation**

MR REEDIE said that, for reasons he was not entirely sure about, he had ended up chairing the working group. Professor Ljungqvist had been unable to make the meeting in Montreal, and he assumed he had been asked to participate to make sure that WADA

did not spend too much money! He had then ended up chairing a group of scientists. The object of the exercise had been to try to raise the quality of the accredited laboratories all round the world. There were considerable demands on WADA from laboratories that wished to be accredited; there were countries that felt that having a WADA-accredited laboratory lent an element of national pride, but there were quite complex issues involved. There had been a full meeting in Montreal and two very long telephone conferences with advisors, staff, Professor Ljungqvist and himself. Mr Barroso would take the members through the whole range of issues discussed in a comprehensive presentation, and he asked the members to think in particular about half a dozen important issues, which could be put into one or two different categories, for example, the environment for a WADA-accredited laboratory should entail the host country having ratified the UNESCO convention. This seemed pretty straightforward, but it was not true for every case. Secondly, the NADO or the NOC had to be compliant with the revised Code and, when getting down to the details of accreditation, there were certain important issues to be concentrated on. One of the recommendations was that there should be a minimum of 3,000 samples tested annually from Code-compliant testing authorities, and that figure should be reached within a two-year period. There were certain minimum standards for testing methods that the committee wanted to be made obligatory, for example, IRMS, testing for human growth hormone and testing for EPO. He wanted the members to think of the recommendations to be made to the laboratories, that they should be involved in some anti-doping research. They should not simply be analysing samples; they should be doing some research. They should be sharing their knowledge; for example, the committee wanted them to publish and have a publication once every two years. The committee thought that they should have a research grant every now and again, and take part in an annual anti-doping symposium, so it was not just a question of being inward-looking; they had to be contributing to the whole fight against doping in sport. Then there were certain principles at the end of the day that if, for example, a laboratory fell below the necessary standard, the system would be that the laboratory's performance would be assessed on a case-by-case basis, involving a disciplinary panel to make sure that the laboratory was actually up to speed, and crucially for WADA, and this was a political issue, which came before the Executive Committee again and again, which was that, before it allowed a laboratory to start an accreditation process, WADA might well want to look at where the laboratory was geographically, so as not to end up with six new laboratories in Eastern Europe, for example, when there simply was not the business there. It had been a very complex and interesting issue, and he was very grateful to Dr Rabin and his staff, and to Professor Ljungqvist for his help, and to the advisers for their views, as they had very clear laboratory experience. He asked Mr Barroso to take the members through all of this. He hoped that the members had read the papers in their folders.

MR BARROSO said that he would try to make the presentation as short and as sweet as possible. The criteria for laboratory accreditation had been divided into three main categories. The first was the environment in which the laboratory would work; the second, and probably the most important, was the quantity and quality of the testing services provided by the laboratory; and the third was participation in anti-doping research activities. For practical reasons, it was necessary to do this analysis differentially, first for laboratories that were already accredited or had already joined the probationary phase for accreditation, and second for laboratories that were going to join the probationary phase as new applicants in the future. Concentrating on the first category, this was clearly straightforward. The ad hoc committee proposed that the laboratories should comply with two requisites, the first being that the host country must have signed the UNESCO convention, and the second being that the NADO or NOC should be declared Code-compliant by WADA, and this was a go/no-go decision. For the laboratories to keep their accreditation status or join the probationary phase, they had to comply with these two requisites. Regarding testing and quality, the first provision was that the laboratories had to analyse 3,000 test samples per year, and these samples should come from Code-compliant testing authorities. This provision would not be imposed on the laboratories right away, but the committee proposed giving them a two-

year buffer period, starting from the time that the new regulations were approved for those laboratories already accredited, and for the laboratories in the probationary phase or joining the probationary phase in the future, from the time that they acquired full accreditation status. This did not mean that the laboratories would not be allowed to do testing for non-Code-compliant clients, but these tests would not count for the purposes of WADA statistics in counting annual test samples. In terms of analytical capability, and in order to increase and standardise the quality of the WADA-accredited laboratories, the committee proposed implementing additional obligatory analytical methods, addressing some of the most important doping substances currently in use. He was referring to IRMS, hGH and erythropoietin. Again, the laboratories would be allowed a grace period of two years for the implementation of these new rules. There were also optional analytical methods taken into consideration, especially those methods applied to blood and, in this case, the proposal would be to have regional capacity for these testing services, with at least one laboratory serving a region. The new ISL made a provision for all new methods to be introduced in WADA-accredited laboratories to be accredited according to ISO 17025, so this was done in accordance with audits and inspections carried out by the national accreditation bodies and trained assessors. The table on the screen showed that it would be possible for the laboratories to achieve the proposal within two years. Looking at the methods mentioned, IRMS, EPO and hGH, more than 90% of WADA-accredited laboratories in the probationary phase would already have implemented these methods by 2009.

One of the most important ways to check for the testing and quality of laboratory performance was participation in the WADA Proficiency Testing (PT) scheme. Four PT rounds were currently taking place per year, including 20 substances, plus education and tests in the event of new methods, technologies or substances that had to be addressed in particular. The analysis of the scoring system provided had shown that there was a need to increase the overall capacity of the accredited laboratories and the quality of the services that they provided. In terms of routine performance during anti-doping analysis, clearly there were ways provided by the ISL to evaluate such performance, and this also included the possibility of suspensions and revocations of accreditation in the event of violations. WADA was also putting in place a double-blind PT programme, including samples used as normal test samples, so that the laboratories did not know that these were proficiency samples. This was the best way of showing how the laboratories performed on a day-to-day basis. In the event of violations, the ad hoc committee proposed that any violations of the ISL or laboratory routine performance regulations be addressed on a case-by-case basis depending on the severity of the violation and that these violations be assessed independently by a disciplinary panel. This was a new proposal. In the event of really serious violations, WADA would reserve the right to organise independent audits of national accreditation bodies or ISL-trained assessors to really look at the violations and causes and how to improve the situation. The third category was the participation of the laboratories in anti-doping research activities. In accordance with ISL provisions, the laboratories should dedicate at least 7% of their annual budget to research activities and the new recommendations of the ad hoc committee were that the anti-doping laboratories should also participate in research and the sharing of knowledge in the anti-doping field, and this meant at least one publication in international scientific peer review journals every two years, at least one participation annually in anti-doping symposia, and at least one application for an anti-doping research grant every three years to WADA or any other funding entity. These statistics would naturally depend very much on the information that WADA was provided with, but the authorities should comply with providing the necessary information to WADA.

Looking at the issue of new laboratory applicants, the work environment would not change. The laboratories would also have to ratify the UNESCO convention, their national anti-doping organisations would have to be Code-compliant, but the proposal was for the Executive Committee to consider the geographical and political implications of granting new laboratory accreditations. Here, it was suggested that new applications

would be promoted within underserved regions and regions in which there was a RADO that could provide the required 3,000 samples per year, and also, clearly from countries that were well positioned to serve these needs, but this would require additional political discussion. If there was an application from a new laboratory from a region in which there was already a WADA-accredited laboratory, further consideration would be necessary and proof of the need to increase regional capacity would be required (that there would be more test samples provided per year); however, again, this would involve additional political considerations. Regarding the testing and quality of the testing services provided by the new laboratory applicants, clearly the main factors limiting the number of new applicants would be the number of required samples per year and also the level of financial and technical support received in order to fulfil this function. The ISL provided for the new laboratory applicants to submit a letter of intent from the NADOs, showing their support and commitment to providing the necessary amount of test samples and also a business plan from the laboratory applicants themselves, showing that they were able to achieve this number and the necessary testing services. Clearly, once a new laboratory was accredited, all of the rules currently applying to accredited laboratories would apply.

He showed the members two slides with key decision points as mentioned by Mr Reddie, regarding the proposal of the ad hoc committee to the Executive Committee in terms of the environment in which the accredited laboratories should work, first, the ratification of the UNESCO convention and second, Code compliance by the ADOs; then, the new provisions for WADA accreditation, the minimum requirement of 3,000 annual test samples from Code-compliant testing authorities; and the new methods to be implemented by the laboratories within two years subsequent to approval of the new rules. Then came the recommendations regarding research and sharing of knowledge, in terms of the number of publications, participation in anti-doping conferences and application for research grants. Finally, the two principles mentioned previously, how to deal with violations of routine laboratory performance or violation of the ISL on a case-by-case basis by a disciplinary panel, and secondly the geographical distribution and political environment considerations to be taken into account by the Executive Committee when analysing new applications.

MR STEEL had two questions, and these related particularly to a region such as Oceania, which had one laboratory. The first related to the capacity to test blood, and the inability or difficulty of getting blood to an accredited laboratory in good condition for analysis. There were two types of test, one was a definitive test, to identify a prohibited substance, and the other related to screening tests for blood profiling. In either case, in order to bring forward an allegation against an athlete, the result presumably should come from an accredited laboratory, so he wondered if there was any consideration given to a separate type of accreditation solely for blood. The second question, and he was just wondering out loud, again in a region with a single laboratory but arguably without a huge extra demand for capacity, was WADA not creating a monopoly for the existing laboratory and an inability to drive down prices, which was one of the key issues in terms of capacity to test samples?

DR SCHAMASCH wondered, regarding the violation of the ISL, whether these procedures would enter into force in January 2009 if the Executive Committee or Foundation Board agreed upon them. Had any procedures been considered for the disciplinary panel?

DR RABIN replied to Dr Schamasch. This was probably more an administrative and legal issue, rather than a scientific issue. Within WADA, the possibility of establishing such a panel had been discussed at length. He believed that the ideas simply needed to be put down on paper and proposed by due process. It was something that was currently being considered, but approval on this procedure was necessary before moving forward.

DR SCHAMASCH asked whether the panel would be legal or whether the laboratory would be judged by peers.

DR RABIN replied that the panel would comprise a combination of the two, as both the legal and the technical expertise would be necessary. The panel would be a disciplinary panel, but it would not necessarily cover laboratory issues alone. When there were some laboratory issues to be addressed, it would be logical to have the technical component with the competence to look at the issues related specifically to the laboratories.

In response to what Mr Steel had said, it was first necessary to distinguish between two aspects, the first being the use of the blood matrix to detect doping substances. This was particularly true for hGH and HBOCS and, probably in the future, there was more analysis to be conducted on the blood matrix, such as gene doping or genomics and proteomics. Here, it was clear that the equipment and knowledge was within the WADA-accredited laboratories and would remain there. The other component related to the blood parameters, in particular when considering the Athlete Passport and, more specifically, the haematological module of the blood passport; tests could either be conducted within the laboratory when samples could be taken to the laboratory, or on the field. There were many competitions for which laboratory equipment was going to the competition venues to perform this kind of analysis. Blood was stable for 24 to 36 hours when maintained in good conditions. It was clear that there was currently the possibility to transfer the samples to the laboratories, and WADA was currently developing the capacity within the WADA-accredited laboratories to make sure that this could happen, and many IFs had requested the possibility to have reliable results controlled by a quality ad hoc system run by WADA. In order to do that, it would be possible to rely mainly on anti-doping laboratories that were already accredited. The issue of pricing was another matter. Everybody knew that the anti-doping laboratories were not making money; it was clear from the reports the previous year that they were losing money when they performed certain analyses. WADA had been approached by private laboratories willing to enter the anti-doping business and, after having meetings with them (he remembered two companies thinking about expanding their business by performing anti-doping testing), they had never come back, so it meant that the capacity of developing a sustainable model for anti-doping analysis was not easy to develop beyond the anti-doping laboratories.

MR STEEL wanted to be clear regarding the issue of 24 to 36 hours: in a region such as his with a single laboratory, even in New Zealand, if a sample was collected from a skiing team in the mountains, it had to be transported to an international airport to take it to Australia (and the situation was even worse for some of the Pacific islands), the 24- to 36-hour sample collection timeframe was extraordinarily tight and frankly impossible in some cases, and it was really pushing the ability to move forward in this area.

DR RABIN added that it was very important, as part of the athlete profiling when talking about haematological parameters, that the tightest control could be put on the laboratories, in order to make sure that the differences observed were not related to quality of sampling or quality of analysis, but to physiological differences and, in order to do that, WADA could trust only those laboratories that went through the accreditation process. As such, it was necessary to make sure that the laboratories were analysing a sufficient number of samples; otherwise, they would not maintain an anti-doping capacity. In the ISL, there was the possibility to grant some form of accreditation to laboratories. This had been discussed with scientists, in particular at the USADA meeting that he had attended the previous year and, so far, unless there was an urgent and specific need in a region, it had been proposed that this solution be put aside, as it would probably create a quality and cost issue. This solution had been considered; however, for the first phase of development of the haematological passport, it had not been kept as the primary solution.

DR SCHAMASCH said that he was still a bit confused about the disciplinary panel. What would be the sharing responsibility between the current Laboratory Committee, which was currently dealing with the issue of violation under article 4.4.11 in the ISL, and the new disciplinary panel?

DR RABIN said that he thought that some of the issues were not only under the realm of the ISL, but sometimes also went beyond that, including the Code and some Code provisions, and this was the idea behind the need for a panel that could integrate not only the technical information but also all of the legal aspects and structures of anti-doping to really have the best judgement in the case of the laboratory and potential related issues.

THE DIRECTOR GENERAL added that Dr Schamasch would be aware when doctors had to face disciplinary proceedings that the process must be right, so WADA wanted to preclude appeals to the CAS by making sure that this panel operated in accordance with correct process. That was the rationale.

DR SCHAMASCH assumed that there would be an appeal process.

THE DIRECTOR GENERAL replied that this would be to the CAS.

MR STEEL said that, if it was an insurmountable problem in the short term, then so be it, but there remained a problem in terms of logistics for blood sampling.

MR REEDIE said that Mr Steel's question and the discussion had been hugely helpful, as it gave a very good example of the issues that had been struggled with. It would not be possible to solve all of the problems upon which the group had worked. As an example, looking at attachment two, the members would see the statistics that the group had worked on, and this had been done under environment, testing and quality and research as the PowerPoint presentation had shown, and the group had started doing this by rating laboratories, and had found that this was very difficult to do, as quite a lot of the opinions had been subjective, which was probably wrong, and the group would have ended up with a ranking of laboratories, which it had not wanted to do, as there would have been an immediate problem as a result of doing that. This was why the "yes/no" situation had been entered into; however, looking at the huge range of activity, going right down under the number of tests in 2007 to the second bottom number, UCLA did over 38,000 tests. Clearly, they were not all from WADA-compliant people, so should all of that be included? Not everybody could do all of the mandatory testing processes. There was a huge variety and variation in the number of tests that people did. Looking at all of that, the group had ended up with a series of what it thought was balanced and reasonable recommendations. That was what the group had been asked to do and the advisors came from the laboratory supervision world, and the group had asked them every time whether it had been right in doing this, and in the main they had said yes. There had been a long debate on the monopoly issue (not particularly in Oceania) and, if one was not careful, one ended up giving one laboratory a perceived advantage over another and might end up in a monopolistic situation. So, the work had been pretty extensive and he hoped on balance that the members thought that it was about right. To answer Dr Schamasch, the appeals final rules should be put in place as quickly as possible, as he did not want WADA to be seen to be imposing different regimes on the laboratories. However, the reason for it was worthwhile and he thought that they would accept it.

THE CHAIRMAN said that Mr Reddie had obviously indicated things that could only be monitored going forward. He had some sympathy regarding the issue of timeframes for the transport of samples to laboratories. The ad hoc committee had clearly done a great deal of consultation and analysis of facts and figures. Was the Executive Committee happy to approve the accreditation process that had just been dealt with?

#### DECISION

Updated criteria for WADA laboratory accreditation noted and related proposal approved.

## **6.4 WADA Laboratory Accreditation – National Dope Testing Laboratory, India**

THE CHAIRMAN said that there was a paper in the members' files. Did anybody wish to speak to it or could he put the question to the Executive Committee? Was everybody in favour of India being given the accreditation?

DR RABIN said that it was very important to have the ISL integrating the highest quality of science, and the New Delhi laboratory, which had been very optimistically involved in the process at the very beginning, had faced the difficulty of gaining WADA accreditation after the first proficiency test, which it had failed dramatically. He was very pleased that the laboratory had made the step to attain accreditation, and it showed how important it was to have a good process in place.

### DECISION

WADA accreditation of the National Dope Testing Laboratory, India, approved.

## **7. World Anti-Doping Code**

### **7.1 International Standards Update**

#### **– 7.1.1 International Standard for Laboratories**

DR RABIN said that the document in the members' files reflected version 5.2, which was the version that had been circulated to the stakeholders. Since the version had been circulated, some comments had been collected and had been incorporated into version 5.3. As the members would recall, ISL version 5.0 had been adopted by the Executive Committee in November 2007 in Madrid. WADA had had to revise this version to integrate the latest provisions in the Code. The group had also integrated a couple of scientific elements as well as the recommendations from the Laboratory Accreditation Ad Hoc Group.

The Laboratory Committee had started working on this new version in December 2007, just after the adoption of the previous version and, between July and August 2008, version 5.2 had been circulated among the stakeholders for comments. 13 different stakeholders had sent in comments, some individual ADOs and some collectives, such as the WADS, which had gathered the comments from all of the accredited anti-doping laboratories on the standard. All the comments had been reviewed by the Laboratory Committee the previous week, and all of the relevant comments had been incorporated into version 5.3. The vast majority of the changes were in section one of the document to reflect the new provisions in the WADC, to revise the definitions and adjust them in accordance with the WADC. In part two, the structure approved in the previous document remained the same, simply giving more space to blood sampling, which was becoming increasingly routine. In section 4.0, there had been an increase to reflect the recommendation approved earlier to move from 1,500 to 3,000 samples from Code-compliant clients, and this was very important, as laboratories had been seen in the past testing prisoners, for example, to come to the level of samples expected under the ISL, so this change was welcomed for Code-compliant clients, which would clarify the situation.

Also, WADA was working increasingly with national accreditation bodies. WADA trained assessors from national accreditation bodies every year, so that they could run the ISO and ISL accreditation concomitantly, and this programme had been extremely fruitful as there was a genuine exchange of information between WADA, the laboratories and the assessors from the national accreditation bodies. In section 5.0 on urine analysis, there were two elements he wished to bring to the members' attention. The time between the A and B sample analysis had been established in the previous document at seven working days as per the recommendation of the Executive Committee. By way of clarification, it had been added that these seven working days



started from the time the laboratory reported the result. For the sake of transparency, he pointed out that there had been some comments and concerns by certain ADOs that seven working days after the test report was sent by the laboratory might be too short for the athlete to be informed and, if desired, come to the anti-doping laboratory. Now that the quality of the anti-doping process had improved over the past few years, there had been a provision in the ISL that the B confirmation be conducted by a technician different to the A confirmation. This had caused some problems in the laboratories. He knew that two cases in court had been lost because of this provision, namely the Landaluce and Jenkins cases. There had been discussion with people involved in other international organisations, and it had been recommended that this unique clause be removed. There was certainly no equivalent in any other scientific field, and certainly no better quality of analysis, so the Laboratory Committee had recommended that this be removed, and this had generated no particular concern during the consultation phase. These two provisions were in section 6, which was in the blood section.

In annex A of the ISL, as mentioned earlier, more and more people were referring to the PT programme as the external quality assessment scheme, even at the ISO level, so he was sorry to say that there would be a move from PT to EQAS, which was now the international norm, and also there had been some adjustments in the proficiency testing (or EQAS) table to give more flexibility to the way in which ISL non-compliances were accounted for. In the Code of Ethics, following the Landis case, when some concerns had been brought forward on the integrity and neutrality of the laboratory experts testifying in court (despite the fact that they had not been justified), it had been deemed a good idea to include a paragraph to indicate that the laboratory staff, when testifying in court, were to bring independent and scientifically valid expert testimony. This did not change the current practice, but everybody had thought that it was a good idea to have this in writing in the ISL.

Moving quickly to the technical documents, an index technical document had been established, which was very important as it avoided the revision of the ISL every time a technical document was updated, and provided a very practical solution. The technical document on the chain of custody had been clarified, first in terms of the definition of custody, which was now more in line with what was internationally acknowledged in the field of science. There had been no change in principle, but simply clearer wording. There was also a better definition of the chain of custody, allowing for the possibility of having different formats for the chain of custody. In the technical document package, which was key in terms of the way in which the anti-doping laboratories interacted with the ADOs, there had been precisions made in terms of wording for what was recommended versus what was mandatory, as well as clear distinction between the initial procedure and the confirmation procedure. These were mainly cosmetic changes.

Finally, there was the technical document on MRPL, in which minimum performance levels had been established for hormone antagonists, based on the PT programme established by WADA, and also a recommendation, and that reflected the state of technology, whereby current technology allowed one to detect extremely small quantities of substances in urine, to the point that it became an issue related to possible contamination. A way around this had been found by introducing a provision stating that, for stimulants and beta blockers, when tested in-competition, the value that should be reported by the laboratories should not be below 10% of the MRPL. That was quite important in order to avoid the risk of contamination reported by the laboratories. There were a few technical documents lagging behind, maybe reflecting some of the recent legal cases: the one on endogenous steroids and the one on norandrosterone.

For identification criteria, it was necessary to introduce a section on protein in the research projects, as protein analysis was becoming more active, and better regulation was needed, so a section had to be introduced in the technical document, as well as for EPO. WADA was actively working with new EPOs on the market and the next generation of EPOs. The idea was to reflect on the conclusions of the working group, which would be meeting again in October to update the technical document on EPO. Finally, probably

one of the most challenging technical documents that the group would have to write was the one on measurement uncertainty, which was probably one of the most complex areas, as it reflected the latest trends in analytical procedures, and how to interpret analytical data in the field of science. He had received assurance from the Laboratory Committee members that the new drafts would be ready for the end of November.

MR STOFIE said that he wanted to thank the good doctor for his excellent presentation. He had been asked to present a request with respect to the time for reporting after the analysis of the A and B samples. The request from USADA had been that, given the fact that there were certain issues about the seven-day period, perhaps seven days should be adopted as the norm and, if that was not feasible, 14 days should be the penultimate, but this should be conditional to good reasons being given and exceptional circumstances warranting more than seven days for the laboratories to report. In other words, it was a ceiling and bottom proposal, with a minimum of seven days and a maximum of 14, but there had to be good reasons for the deviation. This was a request because of the view of the CAS that the athletes' rights were to be present and should not be undermined. He presented this on behalf of USADA.

THE CHAIRMAN said that the Executive Committee had agreed on the seven-day period on a previous occasion; however, he had heard the same concern expressed that sometimes the period of seven working days might be too short. Of course, the athlete could have a representative present.

MR BLAKE asked that Mr Burns be excused as he had had to get back to the White House for a meeting that afternoon. One of the concerns was that a lot of the athletes wanted to have an expert in the field there to represent them, and finding somebody within seven days was also something that USADA had expressed as being among the concerns. The request was to leave the period at seven days, but include some language about exceptional circumstances, which would allow for certain situations.

DR SCHAMASCH disagreed with the proposal. Most of the time, the B sample was just an excuse to delay the procedures. This had been seen in many cases. As proposed, his feeling was that, in WADA, exceptional circumstances would be cited too often, and this was something that would be very complicated to write and WADA should not be ruled by exceptional circumstances. He was not a lawyer, but he thought that this sort of wording should be prevented if possible. A lot of discussion had taken place on whether a B sample was still necessary. For the moment, there was still a B sample as it was very complicated to cancel some rights; however, unfortunately, a B sample was very often used to delay procedures.

DR RABIN added that exceptional circumstances were already embedded in the clause, more from the laboratory perspective. The other element was that, if there was a fixed time, it allowed the laboratory to plan for the B sample analysis. Otherwise, it might be technically difficult for the laboratory, in particular for methods such as EPO, which were more complicated to put into place, to really schedule and plan for the B sample analysis with the proper technicians and equipment necessary. The laboratories were more comfortable with a set time period.

DR SCHAMASCH asked whether WADA might consider having an athlete ombudsman. He had raised this issue some years previously.

MR BLAKE apologised for using a legalistic term (exceptional circumstances). Maybe to make it simpler, as this was very important to USADA, which did a lot of testing, he proposed setting a time period of ten days, without citing exceptional circumstances.

MR REEDIE wondered whether, if it was a USADA request, and tests in the USA were performed either in Los Angeles or Salt Lake City, two independent firms of solicitors or lawyers might be appointed in both cities who could be instructed instantly by an athlete concerned so as to be represented, if desired, at the analysis of a B sample. He would rather keep everything on one date for everybody. If the period was to be seven days, then it should be seven days for everybody, and WADA could try to help individual

countries with a suggestion as to how they might make sure that this time period worked for them. He had been told in the past that, if he had an issue, he could approach a particular firm. It had happened once in the USA; fortunately, he had never had to do so as he had never tested positive.

MR STEEL said that one circumstance that occurred from time to time was that of simply being unable to contact the athlete. It seemed to him that the ADO responsible for the test should be in a position to say that this was a genuine case whereby it was impossible to track the athlete, so the athlete did not even know that the test was happening, which did not seem to be satisfactory; so, either a longer time period or some ability to delay for that kind of reason would seem to be appropriate.

MS KRISTENSEN thought that ten days appeared to be an appropriate solution.

THE CHAIRMAN said that this was an issue in which WADA would be guided by the Executive Committee. What was the practical outcome?

THE DIRECTOR GENERAL said that there had been a lengthy discussion on this the previous year, with the same comments raised for the same reasons. The aim was to give certainty because, from then on, every positive A sample test would lead to a provisional suspension, so the athlete would be suspended and would be active in terms of making sure that the process was accelerated if he or she wanted to try to get off. He did not mind how many days were decided; seven days had been on the table the previous time. Nevertheless, the members should remember that samples could degrade and deteriorate, and WADA had found that there were delays by athletes for no good reason. This been put on the table the previous year to make sure that it did not occur going forward. If there was to be a change in the decision, there should be some kind of justification. That was the situation. It was not notification to the athlete that the time ran from; it was notification from the laboratory, and the Executive Committee should be clear about that.

THE CHAIRMAN said that he was being persuaded towards the exceptional circumstances provisions, and Dr Rabin had indicated that there was perhaps a leaning in those exceptional circumstances currently towards the laboratory. But, he had got the impression from Dr Rabin that there were already exceptional circumstances provisions there, so why, therefore, did one need to move from seven to 10, if one had the right, when exceptional circumstances arose, to use those provisions? It seemed to him that perhaps WADA was meeting concerns through that particular provision. If he was wrong, he would certainly like to hear it, but there were some good arguments for staying put, including the one just given by the Director General. At the same time, there was certainly the view that a little bit longer might not be inappropriate. He was simply looking for guidance, because it was a matter for the Executive Committee, and not a matter for WADA to decide. In the end, WADA could only put the arguments, and the Executive Committee members had to make the decision.

DR RABIN said that, when talking about exceptional circumstances for the laboratory, if the laboratory could not carry out the analysis within seven days, it should have justification for this. This was why the provision was more for the laboratories than for the athletes. Technically speaking, for the laboratories, it was good to have certainty in terms of planning for the B sample analysis. One laboratory had actually said that it was conducting about 200 B sample analyses per year, meaning that it needed tight planning to avoid having too many people in the laboratory at the same time. It was known from experience, and there had been some high profile cases in which the B sample had not confirmed the A sample because of degradation, in particular in relation to proteins in EPO, for example. The idea was to really allow a short time to enable the laboratory to plan correctly, preserve the quality of the samples as much as possible and speedily report to the anti-doping authorities. More and more athletes were requesting the B sample analysis, which was not a problem. The B sample analysis procedure was unique to the anti-doping business because, in forensic science, there was no B sample, so it was a very unique system. People from the laboratories were always somewhat

surprised when they found out about the cumbersome process of B sample analysis, but they always understood that the athletes' rights had to be respected. The athletes' rights were currently still respected, because the B sample still existed and there was the possibility to retest. In relation to delays, there had been a case whereby the athlete had requested an expert and the expert had not been available for three to four weeks and, therefore, the athlete had not been able to attend because the expert had been unavailable. Delays could seriously affect the quality of the samples.

MR BOUCHARD asked how much of an impact a difference of three days would have on the deterioration of samples. Did a three-day difference have a major impact on the quality?

MR BLAKE appreciated Dr Rabin's expertise and comments. He had read in the paper the previous day on his way to the meeting that the Tour de France would be testing samples for EPO, which was the substance about which WADA had issues in relation to degradation. It appeared that, in the great scheme of things, three days was not a lot of time. Following the Landis case, there had been a great deal of discussion about transparency and fairness for athletes, and three more days might help.

DR RABIN said that, technically speaking, three working days would not have a huge impact on sample quality. It was more a matter of process.

THE DIRECTOR GENERAL said that the Executive Committee had directed the management to put seven days in the standard. The Executive Committee was responsible for the decision, not the management. The Executive Committee could change from seven to 10 days if it so desired.

THE CHAIRMAN stressed that this was a matter for the Executive Committee.

MR REEDIE said that there had been a period of seven days since 1 January 2008. He was unaware of any athlete having any of his or her rights denied in any of the tests performed since that time. WADA tampered with days and rules at its peril. The period should be kept at seven days and, if WADA found that an athlete was disadvantaged, it could change the rules at that time. At the moment, all of the evidence pointed to the fact that the rules did work and, therefore, WADA should not tamper with them quite as quickly as Mr Blake was suggesting.

MR LARFAOUI supported Mr Reddie's view.

THE CHAIRMAN asked if the Executive Committee was happy to stay with the seven-day recommendation. This was a living organisation, and its rules were constantly monitored and clearly ought to be driven by practical examples. It had been acknowledged that nobody could point to an athlete being denied his or her rights since 1 January 2008; therefore, why tamper with something in such circumstances? It was a very persuasive argument. Were the members happy to stay with that on the basis of seven days? There was evidence to show that a change was not appropriate.

MR STEEL said that his preference would be ten, but he would approve seven days if that was the consensus.

THE CHAIRMAN responded that he got the feeling that there were more members who wanted to stay at seven days than change.

MR STOFILÉ said that he had simply been speaking on behalf of USADA, but he believed that human decisions were never static and should always be informed by material conditions. He voted in favour of remaining with seven days but enjoined the Executive Committee to monitor progress and see whether seven days was prejudicial to the laboratories or not and, in view of the CAS statements, whether it was prejudicial to the fundamental human rights of athletes or not. Currently, it appeared that there was no empirical evidence on the table to indicate prejudice either way. So, in order to reach a more informed decision, WADA should ask the committee to monitor and see if there was anything prejudicial in what was currently being done. One should always remember that WADA was talking about the laboratories and not so much about the

athletes, and was asking whether seven days was sufficient for the laboratories to report on the B sample analysis, not whether or not athletes were available.

THE CHAIRMAN said that he would indicate to the members that the motion he wanted them to consider and indicate agreement with was seven days on the basis that monitoring would continue, and perhaps on the basis that the Director General might report in May 2009 that nothing had arisen to suggest that seven days was not working or that there was evidence from WADA available that there were problems in relation to the seven-day period. That was the report process of the monitoring. Were the members happy to go ahead on the basis of seven days with a report to the Executive Committee the following May? He asked the members to approve the revised version of the ISL to come into effect from 1 January 2009.

#### DECISIONS

1. Seven-day period for reporting on the B sample analysis maintained, with monitoring to continue.
2. ISL approved.

#### – **7.1.2 International Standard for the Protection of Privacy**

MR NIGGLI said that he would be presenting the latest draft on the data protection standard, which was for adoption. Mr Cooper, WADA's legal advisor on this particular topic, one of the leading experts in Europe on data protection from a London-based law firm, despite the fact that he was American, would be taking the members through the standard. The standard was the result of two rounds of full consultation with all stakeholders, no less than five meetings with the Council of Europe and individual meetings with data protection experts in Europe, so the draft before the members had changed quite dramatically compared to the previous one. Mr Cooper would discuss the various comments received and the position taken, and also take the members through a document received recently from the European Commission. Unfortunately, the document was based on a previous draft and not the latest one. He wished to state a number of important points. The fact that the standard was to be applied worldwide, including in countries with no data protection legislation to date, meant that there would be quite a steep learning curve for these countries. The second point to bear in mind was that the standard was a minimum requirement, and in no way did the standard prevent any country from doing more if it so desired, under its legislation. Finally, the members should also bear in mind that a lot of information was exchanged between countries in which there was no legislation in place, and therefore it was important to have something in place as soon as possible to have a minimum in place. He handed the floor to Mr Cooper, who would take the members through the process and the various elements.

MR COOPER said that he planned to take the members through the process of how the standard had been arrived at, discuss some of the principles embedded in the current version of the standard, and then discuss what had been going on in terms of recent discussions in Europe.

This was a document that had gone through two rounds of stakeholder consultation. The genesis for the document had been a series of meetings conducted by WADA with the Council of Europe advisory bodies, specifically relating to ADAMS. As a result of those meetings, it had become clear that it might be useful for WADA to proactively develop a standard to deal specifically with information privacy as it related to participants (completely separate and independent of the ADAMS issue). On that basis, WADA had developed a draft standard in December 2007, circulated it in January 2008 to the normal array of WADA stakeholders, received comments back, circulated it again in June and received comments back again. For each round, approximately 30 to 40 comments and responses had been received from IFs, anti-doping bodies, information commissioners, data protection authorities, and even some government agencies. A voluminous amount of material had been produced. The responses had been highly

divergent, reflecting the fact that, in some cases, there were stakeholders in jurisdictions with very limited or possibly no background laws, practices or regulations dealing with the protection of athlete privacy, and the fact that there were stakeholders in other jurisdictions whereby there were already robust legislative mechanisms for protecting privacy and data protection in general. As a result, very diverging views had been expressed. There were some core principles that had clearly caused some tension. One of the contentious issues related to consent. Some stakeholders thought that it was impossible to gather informed, voluntary and valid consent from participants in the anti-doping context, given the consequences of refusals. There were others who had felt that consent was a perfectly valid basis on which to proceed. Some had thought, based on principles of transparency, that it would be impractical to put in place robust mechanisms for ensuring notice provided to those involved in the anti-doping processes; however, others had felt that it was essential. Finally, rights of access, essentially a right to allow individuals to access the information that organisations had about them; there were certainly many stakeholders who had felt that that was appropriate and should be in the standard, but there were also some stakeholders who had thought that this would disrupt the anti-doping efforts, could be punitive, and could be used for inappropriate ends.

Based on those two divergent views, the group had tried to arrive at a consensus document. He thought that the evolution of this document had moved from something that was more open-ended, flexible and so forth, towards something that was more restrictive, more binding, and certainly imbued with notions of European data protection legislation. There were certain key elements of the standard about which the members should be aware. In terms of applicability, this was a document that set a minimum threshold, but it set a fairly high threshold. For ADOs located in jurisdictions unfamiliar with these practices, it would be a stretch. However, for ADOs in jurisdictions where there were already very robust data protection laws, they would need to comply pursuant to the standard with those laws, so would need to go further where their own laws required.

Proportionality was another key element of the standard. ADOs needed to limit the collection and processing of information to information that was proportionate and necessary to perform their anti-doping functions. There was a finality principle embedded in the standard which did not allow them to use this information for other unrelated purposes. In terms of consent, this still remained a principal feature of the document; however, it was permissible for ADOs to process information where permitted by their law. Alternatively, they could rely on participant consent subject to the normal or appropriate restrictions in cases where, for instance, an ADO needed to conduct an investigation, conduct proceedings or protect its own legal interests. Moreover, when gathering consents, participants needed to be informed of the consequences of not providing consent.

Another key element concerned transparency. This could be described as a principle of notice, in ensuring that appropriate information was provided to participants when disclosing information to an ADO. So, ADOs must inform participants about the collection and use of their personal information and of their rights. There was also a component that dealt with confidentiality. ADOs had to be very careful about disclosing information in cases in which another ADO might not be able to adhere to the standard, or in other cases specified under the standard. That was to promote confidentiality with respect to the information. There was an element to do with security. Under the standard, ADOs had to apply appropriate technological and other standards when handling personal information; they had to put in place appropriate contractual controls when releasing information to third parties, and appoint a responsible individual to ensure their own compliance with the standard.

There was provision for rights. Participants would have rights under this standard. They would have a right under certain circumstances where reasonable to access information held about them, again subject to reasonable limitations to preserve the anti-doping function so that participants could not invalidate testing results and so forth.

They also had the right to have inaccurate information about them corrected. Finally, there was a complaints mechanism under article 11. Each ADO had to have a mechanism for ensuring the appropriate handling of complaints. If those complaints could not be resolved, WADA would act as an appellate body, which would resolve those disputes if they arose.

He had mentioned EU developments at the outset. The origins for the document came from the Council of Europe discussions focusing on ADAMS. He had found this to be a positive process. It was necessary to be mindful that the data protection regulators had initially had a very opaque view of the doping process and what it involved but, when the situation had been explained to them, they had ended up drafting a fairly favourable opinion letter with respect to ADAMS. However, more recently, in July, he had learned through various sources that the Article 29 Working Party, a body comprised of data protection authorities in the EU, had been looking at the standard, and it turned out that this had been at the behest of the director general at the Commission responsible for sport. This had been done on an expedited basis in order to provide comments on the second version of the standard, which by then had already been superseded. He had communicated with the Commission head of unit and had been able to meet with him, but had been told that the consultation had effectively closed, and that there was no process for WADA to submit input, and had been shown a copy of the document but not been allowed to have a copy. That document had been circulated by the head of unit to the various data protection authorities in July, so the procedure had been a little ad hoc. His understanding was that the data protection authorities, which had not actually met to discuss it, had simply been required to signify agreement to it. The document had been produced and released in July, and was now public. It evaluated an earlier version of the draft standard. One of the issues was that it failed to grasp, or be informed by, some of the specific variables raised when processing personal data in the anti-doping context; one of the things that might have been glossed over or appeared to have been missed was that this was a minimum threshold and that ADOs, in particular those in Europe, would need to comply with their own national laws and therefore go further. WADA had produced a set of responding documents and those had been sent to the Article 29 Working Party in September. He believed that those were on the table. Over the coming months, the recommendation was to continue to interact with the working party to better inform it about the doping process and the unique challenges that those situations presented from a data protection standpoint.

He thought it might be useful to walk through the WADA response to the opinion that had been prepared and to touch on some of the remarks to give the members a sense of some of the reactions and observations elicited from the working party in response to the standard. There were just a few salient points to be noted. Taking the first title page as page one, on page 2, representative of the issues that had arisen, there was the misimpression that all ADOs had to and were currently using ADAMS, a misunderstanding that had been corrected. On page 3, there was a desire to open up the Code itself and perhaps evaluate it and not just the standard. On page 6, at the very bottom, there was an example of where there could be extensive delays as a result of detailed consultation with the working party. In terms of the proportionality standard of principle contained in the standard, they expressed a desire that this be further elaborated upon with respect to specific identified participants whose data were processed, and members would see that WADA had responded, in order to inject a bit of common sense, that to correctly apply the principles of proportionality, a necessity that was not embedded in any particular European statute, would require taking account not only of the category of the participant (athlete or trainer), but also a number of other factors, such as the purpose of the processing, the current state of doping technologies and testing techniques; so, in effect, the request was ultimately unrealistic. Similarly, two pages on, the discussion focused on article 6.1. This was a theme that had been seen and discussed at quite some length with the Council of Europe, and it really related to the adequacy of consents in the anti-doping context, where there was some scepticism and concerns that these could never be valid and therefore an appropriate basis for processing athlete or

participant information. The response made by WADA to the Council of Europe to good effect could be seen on the following page. First, when looking at data protection legislation, consent really was the only universally accepted basis for legitimately processing personal information. That was enshrined in all existing national and regional data protection statutes. Secondly, WADA had also pointed out that, based on stakeholder consultation, concerns about that consent were not universally shared. Thirdly, WADA had made the point that the standard would not act as a restraint or prevent ADOs from processing on some other legitimate grounds if they needed to, to comply with national law. Again, it was a minimum standard. One of the points made by the working party was that perhaps there could be some other basis for legitimately processing this information. The working party had requested the identification of an appropriate legal basis, in effect, a law, statute or regulation. WADA had pointed out that there was no such law, regulation or binding international instrument that had global effect and would justify the processing of athlete data by ADOs, and WADA was not in a position to enact such law, so that request was frankly one that could not be fulfilled.

It was important from a European perspective to have a legitimate process for processing personal data. Under European data protection statutes and many other statutes, in order to process data legitimately, one had to identify a legitimate condition and usually these conditions were specified in the law (a list). The problem with processing sensitive data (for instance, judicial or health data) was that the list was very small. Consent was recognised as a basis for processing such data, but so was a legitimate basis based on a legal enactment, so the working party had been hoping that there might be some legal enactment as an alternative to reliance on consent. The problem was, of course, that there was not.

On the following page, and this was worth noting because he knew that some media attention had focused on this, a point that the working party had observed, the definition of sensitive personal information included such things as race, ethnic origin, political opinions, religious and philosophical beliefs. Interestingly, the only reason for which this had been included had been at the urging of European stakeholders, who had wanted to make sure that the definition was as broad as it appeared in the European directive. Secondly, WADA had also pointed out that, with changing techniques, it might be appropriate to include these categories in the future in case they ever became relevant. Thirdly, WADA had pointed out, based on the proportionality and necessity principle, if there was no need to collect this information, ADOs must not collect it.

In terms of the response, to give the members a sense of how one might quickly get bogged down in the details, on the page he had marked as 13, which was about four from the end, one of the requests was that WADA identify and mandate specific retention times for the different types of personal information that was collected in the anti-doping context. This was something that had been heard before. His preference was to maintain flexibility and, for the time being, to allow ADOs and WADA in consultation with others to identify what those might be, but not to mandate those yet in the standard because of the various variables, including different applicable laws for ADOs that might affect those determinations.

That was all he had wanted to refer to by way of the opinion.

DR SCHAMASCH thanked Mr Cooper for the excellent presentation. He referred to the wording in relation to sensitive personal information. There were some words that should not appear in a sporting environment. He totally agreed that it was necessary to have some indication about racial and ethnic issues, as this had some impact in relation to key ratio, for example, in testosterone; however, it was not necessary to have any indication about political opinions, religious or philosophical beliefs, trade union memberships, commission of offences and sex life. He did not know why such words should be in a sporting document. That was the first point. The second thing was, regarding 8.2, he wanted to be sure that communication on information would not be detrimental to the integrity of the person. It was obvious that, if an athlete had committed an offence (which he totally condemned), in some countries, this could lead to



the death penalty. This kind of thing needed to be taken into consideration. It was necessary to be very strict but also very careful with this kind of communication. He was sorry he had not made these comments previously.

MS KRISTENSEN acknowledged the consultation with the Council of Europe; she wanted to make it clear that Europe was committed to having a standard set up as quickly as possible, and was supportive of the proposal to have a standard in force by 1 January 2009; however, the standard as proposed entailed a number of problems in relation to European law, which should be resolved before committing us (Europe) to the Standard. It was important to avoid incompatibility with European law. She stressed that this was not a question of proposing that European law should be the standard for countries all over the world. She believed that, with the ongoing consultation between WADA and the Council of Europe and the European Commission, it should be possible to reach an agreement and thereby avoid legal uncertainty concerning the applicability of the new standard, and she had noted the remark by Dr Schamasch, so she asked for a postponement on the decision until November, so as to get the right standard upon which all could agree.

THE CHAIRMAN said that the members had before them a standard that had to be in place by 1 January 2009. That was essential. There had been a comprehensive briefing that day and some material that had been submitted very recently by the Council of Europe long after the formal consultation process had occurred; it seemed to have been somewhat ill-founded on an earlier version, and there had been a comprehensive response given by e-mail. His concern was that there was a wish by sporting federations to have a standard; it had been coming for some time and they wanted it there and clear by 1 January 2009. There was a lead-up time for all of that in terms of publication, printing, dissemination and education. A decision in November would certainly make that very tight. There was a concern expressed by Europe, which was somewhat hard to understand, but at the same time would not be ignored. In light of the explanation heard that day, and this had been left on the table on the basis of an open mind and listening to the presentation and consideration of the documentation, as complex and difficult as it might be to read it and absorb it in a very short period of time, but he was asking the representative from Europe whether there was a need to postpone the decision for eight more weeks knowing that WADA must do something in 14 weeks from then to have it in place for 1 January 2009. He knew that the representative had spoken to it but he asked her to respond so that he could address her concerns.

MS KRISTENSEN repeated that Europe believed that a standard could enter into force on 1 January 2009, and would work constructively with the aim of achieving that. She felt that it should be possible; there were still some comments to reflect upon, but it was very important for Europe to have the issue of the standard on the agenda for the November meeting and work hard on it up to then. It should be possible; she knew that there would a short period of time between November and 1 January 2009, but it was important to have a standard that all countries and all sports federations supported, and so she still believed that.

MR STOFILÉ said that this matter had been discussed that morning by the public authorities. He had not detected any violent opposition to either of the two proposals, one being that the Executive Committee agree to an interim arrangement, and the other being that this could be deferred until November. The issues raised were still outstanding, Europe had gone through this consultative process, but had left some things undone, and various other people were also at fault, but what was missing was what the matter of life and death was. What should be avoided by not determining the matter that day? The Council of Europe was also mum on that issue. He was not quite clear as to where the calamity was, as it was necessary to avert a calamity and not create other calamities. Ms Kristensen used the word "transparency", and that was a very important word, but he lacked that in this particular issue. He still did not understand the issues that were offensive to European laws and standards, and did not have access to the issues that were pressing the sports federations. He was somewhat blindfolded here and

would have liked a little transparency so as to be able to assist in the resolution of the problem.

MR BOUCHARD agreed with what Mr Stofile had said. Technically, if the decision were postponed until November, would it be possible to have the standard implemented by January?

MR NIGGLI said that the standard would enter into force one month after approval; but, for a number of organisations, this would be a very short period of time for implementation into their rules. Technically, yes, it would be possible; however, practically, there was a question mark.

MR RYAN said that he was unaware of any specific problems from the IF side whatsoever. The only two points from the sports movement side had been that, if there was room for further adjustment, the sports movement simply questioned the part on information about sex life, political opinions, etc. (3,2) and whether it was at all relevant in this document. He suspected that this had come from consultation with political bodies, which probably wanted a standard text similar to what they had in their own laws, but wondered whether those elements should be removed. The second point was whether it might be possible to suggest a way in which athletes could be protected by applying this standard across different jurisdictions to avoid the case, and the classic example, which was a bit extreme, whereby releasing information across international borders could indeed result in a serious penalty against an athlete, and Dr Schamasch had already given an extreme example. However, from the IF side, he was not aware of any issues other than those.

MR REEDIE said that the question he had was whether it was better to approve a standard now and negotiate with the EU, or better to negotiate with the EU until November and then approve a standard with a very short period of time to bring it into force. He needed a legal view of what the best option was. His experience of the EU was that getting an agreement from it in six weeks would be a challenge.

MR COOPER said that the timing issue was a little unrealistic. He did not know what would be achieved in eight weeks, dealing with the Article 29 Working Party. It had a very full docket and this was not something, as far as he was aware, that it was prepared to address. There were 27 independent national regulators, and they met only according to a pre-set schedule. Therefore, whether one would get anything within those two months (and, looking back, the Council of Europe discussions had taken about two years), he was not really entirely confident.

In terms of incompatibility, this was a minimum threshold; so, if there were European concerns that this was incompatible, he would have thought that they would have been addressed by the fact that this standard endorsed ADOs and jurisdictions with more restrictive laws to apply those laws. He was not sure about the incompatibility issue. If one did manage to get consensus from the working party within that timeframe, one also had to consider an internal consultation process, but there was also the issue of implementability. One might end up with a version of the standard that was so high in terms of what it required that one would find ADOs that would not be able to implement it, particularly ADOs and jurisdictions that did not have those types of laws, regulations or processes, and had never been exposed to these issues, and in fact they would be taken them from 0 to 100 in five seconds, whereas the standard now might take them from 0 to 60 in five seconds. From a privacy perspective, if one was looking to protect participants and their privacy, it was probably more advantageous to get something on the books now, express a commitment to work with the Commission and the working party going forward, and remind them that this was an evolving document, which could be amended and adjusted to reflect particular concerns. That was what he would suggest and, in terms of the definition point about sensitive data, that had been in response to the urgings of the European stakeholders, and in fact the first draft of the document had not contained that list, which had caused some concern. From WADA's perspective, he would be very happy to remove that.

MR LARFAOUI said that he was hearing talk of negotiations with the EU; was WADA negotiating with the European governments or the European Union? Were WADA decisions subject to government agreement or EU agreement? The IFs had no other points apart from the two points raised in relation to this document.

THE CHAIRMAN said that the negotiations with the EU stemmed from the consultation process, and that had been very extensive. After the consultation had closed, there had been a submission from the governments of the EU. WADA was endeavouring to ensure that any concerns were being taken into account. He had heard a clear indication that the concerns raised had been responded to appropriately and what WADA was being asked to approve was a minimum standard on the basis that the idea was to achieve harmonisation, and any country, region, or the EU, for example, if its members wished to, could increase those standards, but WADA needed to get to a level or a base that allowed for something that was in everybody's interest, and then it would be up to individuals to take it from that point on. He thought that what Mr Cooper had made quite clear was that, if another eight weeks were allowed, with the consultative process and the movement around of anything required in a consultative process, there would probably be a further request for additional time, so would WADA achieve anything more in eight weeks' time? The alternative was to put WADA's stake in the ground today and continue the consultation with the EU. He was at a loss as WADA had responded to the EU eleven days previously and had not heard anything in response to what it had said, which might have allayed all of the EU's fears. He did not know if the concerns that had been around 11 days ago were still around. There was something to be said about taking the standard at a fairly minimal low level and then allowing further consultation to occur on the basis that nothing was set in stone. He did not wish to ignore the EU and did not propose that WADA should ever ignore it. He simply asked, after consultation concluded, when the EU came in, as a result of the late submission, whether there was any likelihood that things would change in the next eight weeks. He had his doubts. He did not think that the consultation process would bring WADA to any other landing than it had already come to. Perhaps WADA could develop a system of ongoing consultation to ensure that the EU would be given every opportunity and, if necessary, come back to the table. He would prefer to see that happen; he simply did not have any confidence that, in eight weeks' time, WADA would be any more progressed if it deferred the decision.

MR REEDIE supported that subject to changing the wording that WADA did not wish. WADA should get the wording it wanted, and resolve the two issues raised, and continue working with the EU, but put the standard in place. He had a meeting with EOC the following week, and would alert them to the fact that they might find that they had a standard under European law that was higher than the minimum standard that WADA would put in place. Nevertheless, the minimum standard was needed.

MS KRISTENSEN said that she had listened to what was being said and thought that the members should also listen to what she was saying. After WADA's response, Europe still had some concerns about the proposal, and thought that these could be sorted out within some weeks. She could not give a guarantee, but believed that there could be a solution and that it would be possible to move forward to make it possible to have a standard approved in November for entry into force on 1 January 2009. She urged the members to continue the process and see whether it might be possible to reach an agreement; if not, she would have to express a reservation. If the Executive Committee adopted the proposal, what would the actual decision be? She had noted some concerns expressed about the wording, so what document would the Executive Committee be deciding upon?

THE CHAIRMAN responded that the document approved would be the document in the members' papers with the rider brought up in the discussion that some of those issues in article 8 be deleted, the reference to some of the restrictions or information on such things as sex life. The idea was to make changes to revert back to where WADA had been before these matters had been raised by Europe.

MR NIGGLI said that the words to be removed were “political opinion, religious or philosophical belief, trade union membership and sex life”. On the other point, he was not sure he understood the issue. Anti-doping decisions were rendered public; this was a Code provision. He was not sure he got the difference.

MR COOPER noted that the reason this was referenced in the standard was as per normal practice to refer to various provisions of the Code that might bear upon the issue under discussion in the standard, so he thought that the reference had been to a particular principle, not in the standard, except by reference.

THE CHAIRMAN said that this was his interpretation too. He thanked the members for their constructive thoughts. Was it the wish of the Executive Committee to proceed with the standard, on the understanding that there would be ongoing dialogue with the EU and that, if any matter arose that should be brought to the attention of the Executive Committee, it would be brought back at the earliest possible time?

MR STOFILÉ said that he knew how he wanted to vote; however, he still did not know what Europe was not happy with. If the Executive Committee had to vote on a minimum standard, he had to be confident that Europe did not want a lower standard, but he did not know where the threshold was. There had been no presentation on that particular issue. He still did not know what the stumbling block was or what the size of such stumbling block was. Ms Kristensen said that it could be resolved in weeks; however, if Europe said that the minimum standards were far below what Europe wanted, then he would vote against.

THE CHAIRMAN thought that it was more a case of issues that Europe simply wished to deal with and address. There were two choices: go ahead and continue to consult, or defer. He put both questions: should WADA go ahead and continue to consult, bringing back any issues that arose? Was this agreed? Alternatively, should WADA defer, and deal with the matter again in eight weeks’ time? There was one hand up, Ms Kristensen, so the view of the Executive Committee was to proceed with what WADA had today, subject to the minor change. He gave the members the assurance that WADA would not lessen efforts to continue the dialogue with Europe, notwithstanding, and to see if the responses made required more discussion or if there were further points to be made on the basis of that. WADA would try and exhaust any concerns and, if those concerns were appropriate and genuine, the matter would come back in a reasonable time to the table for further discussion.

MS KRISTENSEN asked whether this meant that consultations between WADA and the Council of Europe and the European Commission would continue over the coming weeks, and it was possible that, with some minor changes, she could come back at the November meeting and include these.

THE CHAIRMAN replied that, if something arose between then and November that required some modification of what had been agreed upon, it would be on the table in November. He assured Ms Kristensen on behalf of WADA that he would keep a close eye on it himself.

#### DECISION

International Standard for the Protection of Privacy update approved subject to modifications proposed. Further consultation to take place with the possibility for amendments if deemed appropriate.

#### – **7.1.3 International Standard for Therapeutic Use Exemptions**

MR NIGGLI said that one of the changes had been sent in advance to the members, and that was an addition of a transitional provision dealing with what to do with existing abbreviated TUEs once the new standards came into force and there were no more abbreviated TUEs, and the proposal was to have a rule dealing with that and the

transition period. The other changes to the TUE standard were on the table, all generated by the discussions held by the List Committee and the Health, Medical and Research Committee. Some small modifications were proposed, one to article 7.11, simply to clarify a matter, one to article 7.13, which took into account the position on beta-2 agonists, one to article 8.1, in connection with glucocorticosteroids, and including the inhaled glucocorticosteroids as part of those that had to be submitted for declaration, and then to annex 1, talking about asthma and its clinical variants as opposed to asthma alone. All of these were technical changes to make sure that the TUEs and the List fitted together, and the only new addition was article 10, to clarify what would happen to abbreviated TUEs during the transition period.

PROFESSOR LJUNGOVIST said that he assumed that these were consequences of what had been decided with respect to the List.

#### DECISION

International Standard for TUEs update and proposed modifications approved.

### **7.2 Sanctions**

THE DIRECTOR GENERAL said that this was really a matter for information. He felt that the responsible approach was to indicate what was being said out there about sanctions. Everybody knew that, from 1 January, there would be stronger sanctions. WADA would monitor those, looking at aggravated situations that might lead to four-year penalties and so on. The IOC had introduced a rule as of 1 July 2008 that any athlete banned for a period of longer than six months would not be eligible to compete in the following Olympic Games. That would be in place for Vancouver. The other things being said out there in terms of additional measures included the German approach to the gentleman who had returned a positive test in equestrianism in Hong Kong (Germany was going to request that the gentleman pay back the money that had been spent on sending him to the Olympic Games). There were additional measures being taken on which WADA wanted to keep an eye to ensure that there was no double jeopardy or any breach of the legal position. It was an ongoing report that would be looked at and perhaps updated the following May.

MR REEDIE said that he had brought a copy of the Chambers judgement in the High Court in London, whereby one NOC had imposed a "sanction" on an athlete, preventing such athlete from taking part in any future edition of the Olympic Games, which was the same philosophy as the IOC philosophy. That NOC would have to look at its by-law, so he was interested in any research to be done in this area. WADA needed to look at it constantly and might need to take some legal advice to make sure that it, as an agency, with its universally accepted sanctions, might not be affected in some way by decisions taken by other organisations. He was not sure that the Chambers decision was hugely helpful, but one could imagine how well it had been received by the sports community.

THE CHAIRMAN said that WADA should always be vigilant. He thought that all of the members would like to see in May a summary on how the revised Code sanctions were faring because, as everybody knew, there were the aggravating circumstances and other circumstances that might lead to a reduction. That did not start until 1 January and it would be of great interest to see how that was being applied and what the impact of such application was. Otherwise, he suspected that WADA would continue to talk about sanctions every year for as long as it existed. It was good to be assured that WADA was not ignoring events and was keeping its finger on the pulse.

#### DECISION

Sanctions update noted.

### **7.3 Model Rules**

MR ANDERSEN said that he wished to combine 7.3 and 7.4 and informed the members that model rules had been established for the revised Code, and WADA was starting to receive revised rules for ADOs, and he congratulated FINA on being the first organisation to submit rules to WADA.

#### DECISION

Model Rules update noted.

### **7.4 Code Implementation 2009**

#### DECISION

Code Implementation 2009 update noted.

## **8. Information Technology**

### **8.1 Selection of New IT Service Provider**

THE CHAIRMAN said that the members would see the paper on the process that had been followed. A decision had been taken, references obtained, and a proper evaluation made, with a recommendation that flowed from that.

MR NIGGLI said that the recommendation had been made by an independent consultant and confirmed by the group, including Mr Reddie, the Director General and the Chairman.

THE CHAIRMAN asked whether the members were happy to approve the selection of the new IT service provider.

#### DECISION

Selection of new IT service provider approved.

## **9. Other Business**

## **10. Future Meetings**

THE DIRECTOR GENERAL informed the members that an extra day had been allocated in September 2009 should the Executive Committee wish to hold a strategic planning day. For November 2009, he suggested that the Executive Committee meet on 29 November (a Sunday) and the Foundation Board meet on 30 November (a Monday). Unless there was a great outrage at those dates, he proposed 29 and 30 November 2009 for the Executive Committee and Foundation Board meetings respectively.

THE CHAIRMAN said that any feedback would always be listened to, although perhaps not welcome! It was extraordinarily difficult to organise meetings, but he hoped that the dates would allow the members to be there and make a contribution.

He thanked the interpreters for their support throughout the day. He acknowledged the WADA management team and staff members for their significant and considerable effort in providing the members with the knowledge and information that allowed them to act as directors of the organisation. He knew that there would always be the statement wishing for the papers to be sent out earlier, but the majority of papers had been sent out three weeks prior to the meeting. This did lead, however, to the likelihood of having a bundle of papers on the table updating the members; nevertheless, the WADA management and secretariat would continue to try to send the bulk of the papers three weeks in advance. He thanked the WADA management team and WADA secretariat for their efforts; it was a very challenging task, and this was a fairly small team, but the members of staff continued to impress him with their skills and

professionalism and their commitment to the cause. He wished everybody a safe trip home, and hoped that nobody would have the same problems he had had in getting there on that occasion. He looked forward to meeting the members in eight weeks' time.

#### DECISION

Executive Committee - 22 November 2008,  
Montreal;  
Foundation Board - 23 November 2008,  
Montreal.  
Executive Committee - 9 May 2009, Montreal;  
Foundation Board - 10 May 2009, Montreal;  
Executive Committee - 19 September 2009,  
Montreal;  
Executive Committee - 29 November 2009,  
Montreal;  
Foundation Board - 30 November 2009,  
Montreal.

The meeting adjourned at 3.50 p.m.

#### **FOR APPROVAL**

**JOHN FAHEY, AC**  
PRESIDENT AND CHAIRMAN OF WADA