



## **WADA Statement about the Opinion of European Working Party on Data Protection**

The World Anti-Doping Agency (WADA) read with great interest the recent opinion adopted on April 6, 2009 by the EU's Article 29 Working Party on Data Protection, which examined the International Standard for the Protection of Privacy and Personal Information ("Data Protection Standard") as well as a number of longstanding and essential anti-doping rules and practices.

### *WADA Pleased the WP 29 Accepts Whereabouts Regimes*

WADA is pleased, in particular, that the Working Party recognizes the proportionality and legitimacy of the current whereabouts regime for top-level, elite athletes.

Under the 2009 International Standard for Testing, which was unanimously approved in May 2008 by WADA's Executive Committee (including the Committee's representative for European governments) and went into effect in January 2009, a limited number of top athletes included in the registered testing pools of an International Federation or National Anti-Doping Organization must indicate where they will be for one hour each day, 365 days a year, to ensure they can be tested at a specified location.

"Whereabouts information is critical for anti-doping organizations to conduct efficient, no-advance-notice out-of-competition testing, in particular because a number of prohibited substances and methods are detectable only for a limited period of time in an athlete's body while maintaining a performance-enhancing effect," said WADA's President John Fahey. "The only way to perform such testing is by knowing where athletes are; and the only way to make it efficient is to be able to test athletes at times at which cheaters may be most likely to use prohibited substances and methods."

### *WADA Pleased the WP 29 Accepts the Standard Does Not Weaken EU Law*

Further, WADA is pleased to note that the Working Party accepts that the Data Protection Standard is most certainly not a threat to European data protection law. There is, in fact, nothing in the Standard that requires any European country to lower its existing level of privacy protection, as some have erroneously suggested. On the contrary, the Standard explicitly and



unambiguously states that organizations based in Europe must respect their national laws and that those laws prevail over the Standard, provided they are as robust as the Standard.

The aim of this new Standard, which was approved by WADA's entire Executive Committee (with the sole exception of the European representative) in September 2008 and went into effect in January 2009, is to ensure that all relevant parties involved in anti-doping in sport adhere to a set of minimum privacy protections when collecting and using athlete personal information, such as information relating to whereabouts, doping controls and therapeutic use exemptions. This is particularly important in the vast majority of the world where there is no or very little data protection legislation in place.

*WADA Disappointed with Other Features of the Opinion*

WADA is, however, disappointed with other aspects of the opinion. For instance, the Working Party go beyond its mandate to review the Standard in order to engage in a sweeping and uninformed critique of certain well-established and long-accepted anti-doping rules and practices that anti-doping organizations worldwide, including those based in Europe, have applied for years (and well before WADA's inception). By challenging rules arising under the World Anti-Doping Code, which has been endorsed by European sports organizations and governments, the Working Party threatens to undermine a critical pillar in the global strategy for combating anti-doping in sport.

WADA also notes the Working Party's discussion of international data transfers and the adequacy of Canadian law. On that point, WADA wishes to note that the Agency either is subject to Canadian federal privacy law, which was granted adequacy status by the European Commission in 2002, or Quebec's provincial privacy law, which Canadian federal authorities have deemed to be substantially similar to federal law and equally robust. Accordingly, no legal impediment should exist to prevent anti-doping organizations based in Europe from transferring data to WADA in Canada, and WADA would challenge any decision, judgement or opinion to the contrary.

Further, WADA believes that the opinion contains some regrettable factual errors and questionable assertions of law. Besides refusing to accept that



athletes can validly consent to participate in anti-doping programs, the opinion also appears to question whether anti-doping efforts serve an important public interest justifying the collection and transfer of athlete data.

“WADA repeatedly offered to meet with the Working Party to provide more information and clarifications, but the European Commission, acting as the Working Party Secretariat, regrettably turned down our requests,” said WADA’s president. “As a result, the Working Party makes in its opinion a number of assertions that have already been contradicted by many governments and privacy experts in Europe. By challenging well-established and accepted anti-doping practices and offering no constructive solutions, the Working Party could potentially undermine the fight against doping in sport, and the protections offered to clean athletes in the region of the world (Europe) that has previously been a leader in this fight. I expect that the follow-up discussions we will have with European authorities in the coming days will be based on better and more reasoned dialogue.”

While the Working Party’s opinion is an advisory opinion and not legally binding on any European governments and anti-doping organizations operating in Europe, WADA will continue to ensure that European governments and data protection authorities remain fully briefed and receive accurate and up-to-date information about global anti-doping rules to address concerns and foster a sensible discussion.

In fact, a meeting will take place in April between representatives of the European Commission, the Council of Europe, European governments, the Sport Movement and WADA to discuss possible amendments to the Data Protection Standard. Any such proposed changes would then be submitted to WADA’s Executive Committee and Foundation Board, which are composed of representatives of the Sport Movement and governments from all regions of the world, at their next meetings to be held on May 9-10 in Montreal, Canada.

In the meantime, WADA has published on its Web site a detailed response to the Working Party’s opinion, as well as several legal opinions contradicting a number of points raised by the Working Party. Click [here](#) to access these documents.