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## **Minutes of the WADA Executive Committee Meeting 19 August 2021, via videoconference**

The meeting began at 7.00 a.m.

### **1. Welcome, roll call and observers**

THE CHAIRMAN thanked the members for their time and participation that day. He did not anticipate a long call, but he thanked them for being available on that exceptional basis prior to meeting again the following month at the regular Executive Committee meeting.

The following members attended the meeting: Mr Witold Bańka, President and Chairman of WADA; Ms Yang Yang, Vice-President of WADA; Professor Ugur Erdener, IOC Member, President of World Archery; Mr Jiri Kejval, President, National Olympic Committee, Czech Republic, IOC Member; Mr Ingmar De Vos, Council Member, ASOIF, IOC Member, FEI President; Ms Grossenbacher, representing Mr Nenad Lalovic, Executive Member, GAISF Council, UWW President, IOC Member; Ms Danka Barteková, IOC Member and IOC Athletes' Commission representative; Mr Shepande, representing H.E. Amira El Fadil, Commissioner for Health, Humanitarian Affairs and Social Development, African Union, Sudan; Mr Reyes, representing CADE; Mr Niwa Hideki, State Minister of Education, Culture, Sports, Science and Technology, Japan; Mr Dan Kersch\*\*, Minister of Sport, Grand Duchy of Luxembourg; Hon. Grant Robertson, Deputy Prime Minister, Minister for Sport and Recreation, New Zealand; Ms Gabriella Battaini-Dragoni, Independent Member, Italy; Dr Patricia Sanguinetti, Independent Member, Argentina.

The following Standing Committee Chair attended the meeting: Mr James Wood, Chairman of the WADA Compliance Review Committee

The following representatives of WADA Management attended the meeting: Mr Olivier Niggli, Director General, WADA; Mr René Bouchard, Government Relations Director, WADA; Mr Sébastien Gillot, Director, WADA European Office and International Federations Relations; Mr Kevin Haynes, Compliance, Rules and Standards Director, WADA; Dr Olivier Rabin, Senior Executive Director, Sciences and International Partnerships, WADA; Mr Julien Sieveking, Legal Affairs Director, WADA; Mr Frédéric Donzé, Chief Operating Officer, WADA and Ms Shannan Withers, Chief of Staff, WADA.

The following observers were present: \*\*Alexandre Hustings (who also represented Minister Kersch for the second agenda item of the meeting), Andrew Ryan, Sergey Khrychikov, Richard Baum, Hiroki Toyooka, Tomohiko Arai, Marcos Díaz, Richard Young, James Wood, Clayton Cosgrove and Darren Mullaly.

#### **– 1.1 Disclosures of conflicts of interest**

THE CHAIRMAN asked the members if they wished to disclose any conflicts of interest. In the absence of any request for the floor, he would continue with the next item.

### **2. Legal/Science**

#### **2.1 Proposed revocation of the WADA-accredited laboratory in Athens, Greece**

THE CHAIRMAN drew the members' attention to the proposed revocation of the WADA-accredited laboratory in Athens, Greece.

MR SIEVEKING said that the members would have received the recommendation of the Disciplinary Committee dated 19 August which presented all of the issues involved in a clear and exhaustive fashion. It was never pleasant to suspend or revoke the accreditation of a laboratory, but it was also essential for the anti-doping system that a WADA-accredited laboratory perform at a high level and in compliance with the International Standard for Laboratories (ISL). The initial non-

conformities had been identified by the WADA Laboratory Expert Group more than three years previously, leading first to a six-month suspension, which had started in 2019. Since 2019, the laboratory had been suspended. The suspension had been extended twice, as the laboratory had been unable to address in a satisfactory fashion the requirements set out by the Laboratory Expert Group. The Disciplinary Committee had considered that a further extension of the suspension would not be sufficient to ensure that the laboratory performed at the required level; therefore, the recommendation was revocation of the accreditation.

In addition to the initial non-conformities identified, the laboratory in Athens had recently reported a false positive, which could understandably have very serious consequences on an innocent athlete. In that particular case, the false positive had been reported in the framework of the WADA EQAS system and it had therefore been identified. The laboratory had then been unable to address that, and the corrective action report had been deemed unsatisfactory by the Laboratory Expert Group. The laboratory had therefore been unable to address issues identified three years previously and had, in addition, reported a false positive in an EQAS round. In order to protect the anti-doping system, it was important to ensure that all laboratories performed at the required level, and he could also confirm that the recommendation proposed by the Disciplinary Committee was fully in line with the ISL.

THE CHAIRMAN asked the members if they had any questions or remarks to make.

PROFESSOR ERDENER noted that the sport movement supported the revocation of the accreditation.

MR HUSTING asked if it would be possible to include, in the final report and decision, a reference to the possibility for an accelerated reaccreditation procedure for the Athens laboratory.

THE CHAIRMAN concluded that the members all approved the recommendation made by the Laboratory Expert Group and the Legal Department.

#### DECISION

Proposed revocation of Athens laboratory accreditation approved, and the request to consider access to the expedited reaccreditation process noted.

### **3. Compliance**

#### **3.1 Non-compliance recommendation: International Automobile Federation (FIA)**

THE CHAIRMAN noted that a final decision would not be required from the members of the Executive Committee about the item to be discussed on the FIA. On Monday, WADA had received the explanation from the federation and the previous day had shared the correspondence from the Compliance Review Committee Chairman, Mr Wood, with the members. That had changed the perspective somewhat.

MR WOOD stated that, as indicated in the memo circulated the previous day, the Compliance Review Committee had held a meeting to consider the letter and the detailed memorandum it had received earlier that week from the FIA. Consideration had been given to the matters contained in that memorandum, including the efforts that the FIA had advised it had made to correct the asserted non-conformity. In light of the recent dialogue between the WADA management and the FIA, the committee had decided that it would be preferable to postpone its recommendation on non-compliance whilst awaiting the outcome of the dialogue and any further information received from the FIA. Accordingly, it had requested that the WADA management continue its liaison with the FIA to determine whether it was willing to give an undertaking to pursue its efforts and to take appropriate action to ensure that delivery of the Team Haas car was corrected for the next Formula 1 season in 2022. If the undertaking were given, the Compliance Review Committee would consider recommending that, pursuant to article 8.4.5 of the standard, the FIA be placed on a watchlist until the beginning of 2022, by which time it would be known whether the delivery of the car for that year was or was not compliant within the meaning of the CAS award. If the undertaking were not given, the case would need to be considered by the Executive Committee in the usual way, based upon any

updated recommendation and advice from the Compliance Review Committee. The approach that the committee considered appropriate meant that it would present advice and an updated recommendation at the September meeting of the Executive Committee, in light of the ongoing dialogue and further information provided by the FIA. The way forward would then be determined. The Compliance Review Committee would of course ensure, in the meantime, that the Executive Committee was kept up to date with developments in relation to the case. He thanked the members of the Executive Committee for the opportunity to summarise the approach currently deemed appropriate by the Compliance Review Committee.

MR DE VOS thanked the chairman of the Compliance Review Committee for the introduction and fully agreed that the matter was not ready for a decision by the Executive Committee. He believed, however, that it would be very useful to have external legal advice on an eventual recommendation in relation to the FIA. It was important to look at all sides of the issue; it was a very difficult case and WADA had to be sure that if, at a certain stage, the Compliance Review Committee requested a decision of the Executive Committee, external legal advice would be provided in advance, clarifying the potential risks if ever the decision of the Executive Committee were contested before the CAS.

MR WOOD confirmed that the Compliance Review Committee had requested external legal advice in relation to the matters raised in the memorandum which were important not only for that case but also maybe as a precedent for the way ahead.

MR ROBERTSON thanked the Chairman and Mr Wood for their shepherding of the item. His question (and he appreciated that a decision was not being made today) related to the enforceability of the proposed consequences originally put forward by the Compliance Review Committee. He was interested to hear about the likelihood of them being enforced and through what mechanisms they would be enforced if WADA were to go ahead with those recommendations.

MR HUSTING said that the public authorities had taken note of the Compliance Review Committee's request to postpone the decision but had many questions on that very sensitive issue. They wanted to know whether there were some clear guidelines that had been issued and circulated on the display of the Russian flag by the Russian athletes on their uniforms and equipment and that had been communicated to all stakeholders, major event organisers and so on. If such guidelines did exist, he asked WADA to share them with the Executive Committee members before the next meeting and, if not, to prepare them for the next meeting. The public authorities also stressed that the reasoning brought against the FIA seemed to be somewhat inconsistent with the position agreed upon by WADA in relation to the Russian Olympic Committee's (ROC) use of the colours of the Russian flag during the Olympic Games in Tokyo. There was also a serious risk that notice of non-compliance could be seen as an arbitrary and selective application of the CAS arbitral award. At first sight, for the public authorities, the FIA's argumentation appeared to be reasonable. The public authorities asked WADA to be very careful on that issue and would like to know if WADA had taken all the necessary guarantees to avoid a possible decision unfavourable to the FIA being challenged before the CAS, which would undermine WADA's credibility. Why had that item been put on the agenda for a special Executive Committee meeting during the holiday and then withdrawn?

MR WOOD responded that he could answer some of the questions. He agreed that it would be very helpful to have guidelines on the uniforms and flags and so on for the future, as that had been a unique case. The possible inconsistency with the uniforms used by the Russian Olympic Committee at the Olympic Games in Tokyo was a matter raised in the memorandum provided on which the CRC would be taking legal advice and giving considerable attention to.

As to the consequences of the CAS challenge, they had been taken into account and, if the current approach were successful, that might be avoided; however, it was obviously very important to take that into account, and it had been taken into account. As to the consequences for enforcement, the memorandum raised issues in relation to the consequences proposed, and that would be a matter on which legal advice would be taken.

MR SIEVEKING said that, in relation to guidelines, none had been published to date. As to the steps taken to ensure that the FIA would be considered correctly, WADA had always been proactive in terms of providing information requested by IFs to ensure that everything was properly addressed. As to the issue of the uniforms of the ROC, he would prefer to give the floor to the Director General. It had been used historically and had also been discussed internally by WADA on a number of

occasions. Differences had been seen and, on that point, he knew that Mr Young had also been looking at it in detail and would be able to answer the specific question on the Russian uniforms.

MR YOUNG said that, if one looked at the CAS decision, it had a separate provision on the display of the Russian flag. It said that the flag of the Russian Federation could not be displayed at any official venue or area controlled by a signatory or event organiser; so, when the Haus car was on the track, that was an area controlled by the FIA and, if the Russian flag was displayed on the Haus car, that would be a violation of the order. There was the issue of, when looking at the delivery with the painting on the Haus car, whether that was a Russian flag or not, but the FIA clearly had the authority to control that. The uniforms were an entirely separate section of the CAS decision. WADA had originally asked for a ruling from the CAS saying that the uniforms could not contain the colours of the Russian flag, but the CAS had said that the uniforms could contain the colours of the Russian flag, they just could not display the Russian flag, but that colours of the Russian flag exception applied only to uniforms, and so that argument in the memorandum did not fly. There was still the question as to whether when one looked at the car from the grandstand as opposed to lying on one's belly taking a shot up at the front fenders and whether one saw the Russian flag or not, which would be the issue, if and when the case ended up at the CAS: whether that was an attempt by the Haus car to circumvent the decision or whether it was not a display of the Russian flag. However, the colours of the Russian flag argument applied only to the uniform.

THE DIRECTOR GENERAL observed that Mr Young had already clarified some of the distinctions that needed to be made. The idea of guidelines was an interesting one, although he was not sure it was one that WADA would want to start. The CAS decision had made that distinction and had indicated what was and was not permitted. Whether what was then seen on display violated the CAS decision or not was a matter of appreciation, and at some point, that might end up before the CAS to decide whether or not there was a violation; however, to anticipate all potential cases, WADA was not going to second-guess the CAS. It had asked for a neutral uniform, had got what the CAS had decided was appropriate and it was written in the CAS decision, so he did not think that WADA should go further than that. He appreciated that everybody should enforce the CAS decision.

In response to Mr Husting's question, the Compliance Review Committee had received further correspondence on the Monday, so that explained why the situation had changed compared to a few weeks previously, when the meeting had been set up.

In answer to Mr Robertson's questions, some of the recommendations would be enforced by WADA, as they directly concerned WADA business, and others would have to be enforced by stakeholders, by signatories to the Code, and WADA would again oversee that and it could lead to further compliance cases if not enforced properly. That was the reality of the system. Nobody had the authority to do that alone, but WADA would do its part.

MR DE VOS referred to what Mr Husting had said. The sport movement shared the same concern about the strength of an eventual sanction, hence the reason it was deemed important to have additional advice. In relation to the question on guidelines, to his knowledge, the IOC had established guidelines and he believed they had also been signed off by WADA. WADA should not go into the details of the case at that meeting, and should wait and see the proposal of the Compliance Review Committee, as he understood that there was a kind of communication ongoing with the FIA, so he suggested going into the details in September if necessary.

MR HUSTING said that the public authorities still had two questions: the first was whether WADA was sure that what was contested on the car was covered by the definition of a flag or emblem in the CAS decision. Also of concern was the fact that, when reading the CAS award, there was no clear definition of what a flag was, and the dictionary definition of a flag did not seem to be what was contested or challenged on the spoiler of the Team Haas car. The public authorities also wanted to know who really supervised the proper implementation of the CAS decision.

PROFESSOR ERDENER fully agreed with his friend Mr De Vos on that matter, as there were very well-prepared guidelines and, in any case, that would be discussed again during the next meeting. In his opinion, there was need for discussion during the present meeting. In any case, the Compliance Review Committee would examine the situation again and again and the matter would be discussed again. There was no need to discuss the details several times, in his view.

MR YOUNG responded to the question. What was a flag? He thought that the intent of the CAS decision was clear and one of the things that WADA would argue, if the matter ended up in the CAS, was whether looking at it a normal person would say that it looked like the Russian flag or whether, if one went to a detailed definition, the bands were completely horizontal, completely equal in width, and how far one could go in a discrepancy; so, if one of the bands was only slightly narrower than the others, would that still be a flag or could one completely avoid the impact of the CAS decision by making little variations? That was a legitimate question. One would end up with a bit of a 'beauty is in the eye of the beholder' situation. WADA would see what the CAS said and whether it would consider a normal person watching from the grandstand who thought that it looked like the Russian flag or whether it would take a detailed approach.

THE DIRECTOR GENERAL said that, on the second question asked by Mr Husting on who was overseeing the CAS decision, every signatory was bound to enforce the CAS decision within their own rules and activities, and WADA oversaw that as part of its normal compliance programme, hence the reason WADA was having the discussion that day. He thought that was the process that was being followed.

MR REYES believed that the explanation that the CAS decision differentiated between the issue of uniforms and other cases was very clear; however, he thought that WADA should be very careful with such types of case that were not common before making a decision that could have huge consequences on sport organisations. Nevertheless, the differentiation between the uniforms and other cases was very clear to him.

THE CHAIRMAN agreed with Mr Reyes. That was WADA's role, and WADA carefully monitored all cases. As indicated by Mr Wood and as a result of information received from the FIA since convening that meeting, WADA would defer the decision until the upcoming September or November meeting, by which time WADA expected to have received confirmation from the FIA.

#### DECISION

Decision in relation to FIA non-compliance deferred until the Executive Committee meeting in September or November 2021.

#### **4. Other business**

THE CHAIRMAN asked if the members had any requests for the floor. Before giving the floor to Ms Barteková, as befitted a former sprinter, he had anticipated that that might be her last meeting with WADA and, if that was the case, he wished to take the opportunity to extend his appreciation to her for her contribution to the Executive Committee and the Athlete Committee over the past four years. He thanked her for her passion, engagement and great personality and everything she had done for WADA and the entire anti-doping community.

MS BARTEKOVÁ thanked the Chairman, who was definitely faster than she was. She thanked everybody for an incredible four years serving the interests of the athletes and she encouraged the members to continue serving to protect clean athletes and to punish those who cheated. She thanked everybody for an amazing four years. It had been an absolute pleasure to work with them. She hoped that they could keep in touch. She would definitely stay involved in the sport movement. She wished them the best of luck in their future work. There would be another IOC athlete representative at the next WADA Executive Committee meeting, as her mandate with the IOC Athletes Commission came to an end at the time of the closing ceremony of the Olympic Games in Tokyo.

Recognising that a former sprinter could not possibly be faster than a shooter, THE CHAIRMAN thanked Ms Barteková again for her work.

MS YANG said that it had been great to work with Ms Barteková for many years. They would undoubtedly meet again at other events. She thanked Ms Barteková.

## **5. Future meetings**

THE CHAIRMAN looked forward to seeing some of the members in person in Istanbul, and others virtually.

He thanked the staff for their support and thanked the members again.

### DECISION

Executive Committee – 24 November 2021, Paris, France;  
Foundation Board – 25 November 2021, Paris, France;  
Executive Committee – 17 May 2022, location TBC;  
Foundation Board – 18 May 2022, location TBC;  
Executive Committee – September 2022, Australia;  
Executive Committee – 17 November 2022, Montreal, Canada;  
Foundation Board – 18 November 2022, Montreal, Canada.

The meeting adjourned at 8.00 a.m.

### FOR APPROVAL

MR WITOLD BAŃKA  
PRESIDENT AND CHAIRMAN OF WADA