

**Minutes of the WADA Executive Committee Meeting  
22 November 2008  
Montreal, Canada**

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The meeting began at 9.00 a.m.

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

THE CHAIRMAN welcomed everybody to the Executive Committee meeting. He hoped that those members who had travelled a great distance were coping with the jet lag and was sure that, as the day went on, the nature of the discussions would ensure that everybody stayed awake. He welcomed the new minister from Canada, Mr Gary Lunn, to his first meeting of the Executive Committee and WADA. He looked forward to the continuing input that Canada had always given. He also acknowledged that Mr Mikkelsen, as a result of being elevated in politics in Denmark, had been given other responsibilities that represented some form of promotion. He was, of course, pleased about that, so Mr Mikkelsen's place was currently being taken by Ms De Boer-Buquicchio, whom he thanked for alternating for Mr Mikkelsen. Two Saturdays previously, there had been an election in New Zealand, bringing about a change of government; consequently, Mr Cosgrove, the representative for Oceania on the Executive Committee, was not present. The new minister was also the minister for foreign affairs; he had chosen to attend the APEC conference that weekend in preference to the WADA meetings. As a result, Minister Kate Ellis would take the chair for Oceania. He welcomed first-time observers to the meeting, and trusted that they would see the workings of WADA and the value of the work undertaken, and appreciated their ongoing interest by being present.

The following members attended the meeting: Mr John Fahey, AC, President and Chairman of WADA; Ms De Boer-Buquicchio, 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; Mr Craig Reedie, IOC Member; Mr Makhenkesi A. Stofile, Minister of Sport and Recreation, South Africa; Ms Kate Ellis, Minister for the Arts and Sport, Australia, representing Mr Murray McCully, Minister for Sport and Recreation, New Zealand; Mr Gian Franco Kasper, IOC Member and President of the FIS; Mr Christophe De Kepper, IOC Chief of Staff, 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 Gary Lunn, 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: Patrick Schamasch, Andrew Ryan, Patrick Penninckx, Mikio Hibino, Peter De Klerk, Monika Ungar, Shin Asakawa, Nompumelelo Sioiya, Bill Rowe, Graeme Steel, René Bouchard, Hajira Mashego, Brian Blake, Michael Gottlieb, Jean-Pierre Lefebvre.

## **2. Minutes of the previous meeting on 20 September 2008 (Montreal)**

THE CHAIRMAN indicated that some minor variations to the minutes had been requested from the European representative from Denmark on the previous occasion. He asked the Director General to indicate those minor variations that would lead to an amendment of the papers circulated.

THE DIRECTOR GENERAL said that, on page 41 of the minutes, the representative in question had requested the addition of a phrase to line 8. The phrase requested was "before committing us (Europe) to the standard". That was an amendment made following a request from the Government of Denmark. He had listened very carefully to the tapes, and made that suggested amendment. The second amendment was following a discussion with the Vice-President. On page 20 of the minutes, wording needed to be inserted to give credence to the sentence that had been said. Line seven of the final paragraph would read: "when it was clearly splitting up the stimulants between specified and non-specified substances". In the first paragraph on the same page, Professor Ljungqvist had pointed out a nonsensical sentence and, having listened to the tape, he had to agree that it was very hard to decipher what had been said and so, rather than leaving it as it was, suggested that it be deleted. The sentence began with the words "Despite the granting of TUEs". He asked that those deletions and additions be made. Other than those, there had been no suggested changes.

MS DE BOER-BUQUICCHIO said that she had listened with great care to the Director General's amendment concerning the intervention made by the European representative, and appreciated that this was an improvement on the text as the representative had not quite made it clear that she was making a formal reservation. She accepted this amendment as meeting the point but, as there would be minutes of the present meeting, she stressed once again that the sense of this intervention had been that Europe made a formal reservation against the international standard, and this standpoint would be repeated later on in the meeting.

THE CHAIRMAN said that Ms De Boer-Buquicchio would be given the opportunity later that day and he was sure that it would be accurately recorded in the minutes of the day's proceedings. He pointed out, however, that the purpose of any minutes was to record what had actually been stated on the previous occasion. Following the request from Denmark, the WADA management had examined the tapes carefully and had nevertheless agreed to the alterations referred to by the Director General. He asked the members to authorise him to sign the amended minutes as an accurate account of the discussion and proceedings on the previous occasion.

MR DE KEPPEL said that discussion had been ongoing with the IFs regarding the point of statistical data. There seemed to be some problems remaining regarding the reconciliation of statistics on anti-doping cases between the IFs and WADA. He requested that a working group be set up between the IFs and WADA to look at how data was collected and ensure that any publication of data on the website was correct and had been cross-checked with the IFs. He thought that it would be worth looking into this.

### DECISION

Minutes of the meeting of the Executive Committee on 20 September 2008 (including the aforementioned subsequent additions and deletions) approved and duly signed.

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

THE DIRECTOR GENERAL referred to a number of the items in his report that perhaps needed to be highlighted and might require some discussion.

In relation to the UNESCO convention, the 100-country mark had been reached earlier that month, and UNESCO had held a celebration for that. This was the fastest

convention to reach the level of 100 ratifications in the history of UNESCO. There were now 102 countries. As the members would appreciate, this was work in progress, and WADA was continuing to achieve the full number.

WADA had completed a project on legislation with UNESCO. He had mentioned this in September. It was available for anybody wishing to look at it. WADA would advance that project to the next stage, which required more detail in relation to each country than had been reported on, and would work again with UNESCO to develop the next stage of the project. It would be most helpful to WADA and to the IFs, and those who had been working together in the project team relating to investigations.

For information, the UNESCO Conference of Parties was to be convened in Paris towards the end of October 2009. This would be a significant meeting for those countries that had ratified the convention.

On governments and UNESCO, WADA was lucky to have significant partners among its government friends who had translated the Code and other documents. That morning, his Slovenian friends had presented him with a copy of the revised Code in Slovenian. This would be posted on the website, so that the website had the Code in as many languages as possible, with the underlying statement that, of course, one could not use the translation as the exact Code. English was WADA's number one language, and French was the number two language.

The Interpol MOU had been signed off by Interpol at its general assembly in St Petersburg in October. WADA was now engaged at management level in advancing the logistics required to give effect to that memorandum. The following day, the French Foundation Board member would inform the members that France was seconding an officer to Lyons to work for Interpol, and WADA would need to meet with that officer and others at Interpol to see that WADA could beneficially use the new partnership. He reminded everybody that this was a police partnership with information shared between police forces around the world, and they could share information only if they were collecting it subject to laws that were in place, and there were many countries that did not have laws in place, so the significance of this would be sheeted home only when there was legislation in all countries dealing with the trafficking and distribution of prohibited substances.

The protocols in relation to investigations had been developed further and the report writers had met with him to look at what needed to be done next. WADA would convene a smaller group of people with experience in sharing information so that the protocols eventually written were based on real practice rather than theoretical practice. WADA would be setting a series of case studies, because, when gathering evidence, WADA had to show situations where that was shared by two public authorities, by a public authority with a private body, a private body with another private body, and a private body with a public authority. There were several combinations and many laws or regulations that had to be looked at carefully at national level before engaging in international sharing. WADA would do that and would engage the smaller writing group in the New Year so that, in May, it would be possible to table a series of protocols.

As to the standing committees, he had been in touch with the respective chairs of the working groups, and the President and he had made recommendations regarding the composition of these, to be tabled at the Foundation Board meeting the following day. WADA had also been engaged in the reappointment of its expert groups. The members would appreciate the difference. The expert groups were appointed on an annual basis, and were not subject to nominations by the stakeholders, but were subject to expertise. He had met Professor Ljungqvist to look at the composition of the List, TUE, Laboratory and Gene Doping committees so that they could be announced early the following week, once WADA had got in touch with the individuals it was asking to serve on such committees. It would be wrong to make a public announcement before approaching the individuals, but the members could be confident in the fact that the President and Vice-

President had approved the lists and WADA would be writing appropriate letters to the individuals on Monday.

In relation to the working groups, WADA now had four committees, and 53 members in the working groups. As far as regional distribution was concerned, 24 members would be coming from Europe, 10 from the Americas, 9 from Asia, 6 from Africa, and 4 from Oceania. There would be 36 male and 17 female members. A total of 17 came from direct government nominations and 19 from sport nominations, and the Athlete Committee was, of course, exempt from such analysis, as it was essentially a sporting group made up of former athletes. The management had looked at trying to comply with the constitution, which said that each of the committees must comprise the chairman plus 11 members. WADA succeeded in the Finance and Administration Committee, and had always succeeded in that committee due to the strong direction from the committee chairman; the same success was not quite so evident in the Health, Medical and Research Committee or the Athlete Committee, and WADA was very close to success in the Education Committee. He was looking at a form of rotation so that, at the end of 2009, WADA would be totally accurate from a constitutional point of view. The impact of not being accurate was one of cost, because WADA paid for the members to come to the meetings and, if there were more than 11, WADA had to budget for more flights. The management would adopt a pretty strong approach the following year to ensure that it was within the realms of the constitution.

There was an article on Nigeria in his report; WADA would be going there in April. It had been necessary to defer this trip due to a problem with visas. The management was still looking at continuing the work conducted in India. The management would work in 2009 with Brazil, and had ongoing work with Russia. These were huge countries needing some assistance in the development of their anti-doping programmes.

His report on the Olympic Games and Paralympic Games spoke for itself. Both had been very successful events as far as WADA was concerned. The Independent Observer reports in relation to each of the events had been published on the WADA website. The management had followed up with the IOC on issues from the Independent Observer report in Beijing and was happy that, as a result, the IOC would use ADAMS in Vancouver, which would get over some of the problems that the anti-doping programme in Beijing had encountered. That would be of great assistance going forward. At the Paralympic Games, the audit model of the Independent Observer approach had been used (WADA was now suggesting that this be used for the Olympic Games). This had a significant advantage of the team being able to report to those on the ground on a daily basis so that, if things had to be remedied, they could be remedied on the spot, and WADA did not have to wait until two weeks after the Olympic Games before issuing a report, by which time, of course, it was too late to make any change. He believed that WADA had reached that stage of development and there was a special item on the agenda that would deal with that further.

In relation to the issue on GAISF, he wished to seek a change to the way in which he had written the report, as it was a little mistaken, as Mr Kasper had very kindly pointed out. GAISF had not rejected the WADA proposal but was suggesting further dialogue in order to end up with an acceptable model for the IFs that was workable and practical. He asked the members to allow him to continue those discussions and dialogues so that everybody ended up with the desired result.

The Landis case was one that was still not complete, as Mr Landis had challenged the CAS decision in the federal court in California. He had been in dialogue with WADA's lawyers in Washington and with USADA, and was confident that there would be an appropriate resolution of those proceedings within the coming days. He preferred not to report further, as the discussions were confidential, but he assured the members that this would lead to a resolution with which everybody was comfortable, and there would be no backing down from any principle or from the decision taken by the CAS. He did not need to ask for permission, but advised the members that he would continue to work to ensure that there was a resolution. It would not cost WADA a significant amount in

terms of legal fees, and he was sure that the chairman of the Finance and Administration Committee would be relieved to hear that.

The item on expert sanctions or measures had been included in the report so that the Foundation Board members would be aware of the matter. This was ongoing and he continued to make sure that it was on the radar to ensure that issues related to sanctions were carefully covered and responded to.

He asked the members to put aside the dates of 21-23 June 2009, when WADA would be convening a thought leadership symposium in Oslo, Norway, generously hosted by the Norwegian Government. He would provide further details in the coming weeks. It would not be a compulsory meeting for Executive Committee members, but their presence would be useful if they could manage to attend.

WADA was still extremely worried about the issue of betting and corruption, and he was aware that the IOC was similarly very concerned. The management would continue to talk about it with the IOC and others and, if it was possible to advance the issue as far as anti-doping was concerned, he would be able to provide a better briefing paper and document to the members for the meeting in May.

Mr De Kepper had referred to statistics in his preliminary comments. It was WADA's duty to publish statistics under article 14.4 of the Code, but WADA was still very reliant on receiving those statistics from the anti-doping organisations. There was a mandate to supply these to WADA under article 14.3. WADA continued to work with the IFs and NADOs to accumulate statistics but, if they did not give their statistics to WADA, WADA could not publish them. WADA did have and was confident of the reports from the laboratories. WADA also published data in relation to the federations, so tried to match these up. If everybody were on ADAMS, and reporting appropriately, WADA would be able to do this without a problem, but needed assistance from the stakeholder group if the information was to be accurately received. The management would work with anybody on that score to try to make sure that the data published was the best available. This had been done with FIFA that year, and he would be happy to do this with anybody who might be able to provide added assistance.

As far as the management team was concerned, he welcomed Ms Julie Masse, the new Communications Director, who would start work on 1 December. She had come to the meeting to meet the members and obtain some background as to how WADA operated. A new director had been appointed to run the office in Lausanne: Mr Kelly Fairweather, who was well known to the sport movement, having worked in the IOC. He was currently working in South Africa, and would move to Lausanne in January and take up the post on 15 January. He was pleased to welcome Mr Fairweather as well.

If the members had any questions or comments in relation to his report, he would be happy to hear them.

THE CHAIRMAN invited the members to comment on the report.

MR KASPER thanked Mr Howman for making amendments in relation to the GAISF agreement. He made it clear that GAISF had never rejected the offer from WADA, but had asked that the management be seated in the WADA office and not in Monte Carlo without any connection to what was going on at WADA. He fully agreed with the new wording, that further negotiations should take place, but suggested that such negotiations take place that very day so that it would be possible to make an announcement the following day to the Foundation Board. He would be grateful if that could be the case.

THE CHAIRMAN added that the compliance report would be dealt with later that day; a number of less-resourced sports seemed to be outside compliance. This particular proposal had always been seen as a way of assisting. Members would see that RADOs were capable of assisting smaller nations and NOCs to come within the compliance provisions. This proposal was very similar to the RADO proposal, and was described as IFADO. Whatever the structure and its location, it was designed to assist those smaller

sports, and he was delighted to hear that it was a lot closer than he had been aware before sitting down that morning.

MR KASPER asked if the Chairman agreed that the decision should be taken that day.

THE CHAIRMAN said that he would be happy to ask the Director General to deal with the matter quickly and reach a decision.

MS DE BOER-BUQUICCHIO thanked the Director General for his very comprehensive report and wanted to use this opportunity to say that the Council of Europe welcomed the fact that the Director General and the Legal Director had participated in the last CAHAMA meeting and that the meetings were, in general, well attended by the WADA management. She believed that it was very important for Europe to closely follow the activities of WADA and vice versa (that WADA closely follow the activities of Europe), and she welcomed such good cooperation.

She had noted that 102 states had ratified the UNESCO convention; this was a good result but, of course, more ratifications were needed and she would follow up the request made by the Director General that European countries should assist the remaining countries to ratify the convention and would use the opportunity of the next conference of sports ministers in Athens in December to make an appeal to the remaining governments to do precisely that.

THE CHAIRMAN assured the Executive Committee that, in the Landis issue, the Director General was certainly seeking the counsel of himself and the chairman of the Finance and Administration Committee. Obviously, any litigation in America, and in the USA in particular, was expensive, and he was very conscious of that, but certainly it was one issue that was being consulted. The French representative would be given an opportunity the following day to speak more formally to the issue of the Interpol officer, and the Japanese representative would also be given an opportunity to talk about Japan's recent generous offer.

THE DIRECTOR GENERAL seized the moment to reply to the two interventions made in relation to his report: WADA would do its best to satisfy Mr Kasper's request, but there were a couple of things that were slightly more detailed, and might require some information by the Executive Committee in relation to money and structure. He was sure that he would be able to resolve the issue with Mr Kasper in one minute, but there were some other issues that might need to be tabled in order to be able to fully implement the concept.

He appreciated the opportunity to attend the CAHAMA meetings; he had been able to attend that time, although he could not promise that he would be able to attend every time. Nevertheless, he would certainly ensure appropriate representation from WADA management at the CAHAMA meetings. As far as the ratification process was concerned, there was a full report on every country, the progress being made and the current status, and the European representatives might like to look at that, as it was a significant document, and one that was worked on on a daily basis, so that might be quite helpful.

## DECISION

Director General's report noted.

### **4. Operations/Management**

#### **4.1 Executive Committee appointments 2009**

THE DIRECTOR GENERAL informed the members that WADA was awaiting the outcome of the meeting in Athens in December referred to by Ms De Boer-Buquicchio to find out who the European representative would be, and the African continent was having its meeting that evening, and WADA would be informed of the African representative the following morning prior to the meeting of the Foundation Board.

## DECISION

Executive Committee appointments 2009 noted.

### **4.2 Foundation Board**

#### **4.2.1 Foundation Board memberships 2009**

THE CHAIRMAN noted that this issue would be discussed the following day.

#### **4.2.2 Endorsement of the Foundation Board composition for the Swiss authorities**

THE CHAIRMAN said that such endorsement was required by the Swiss authorities, and the endorsement could be given when all of the details in terms of Foundation Board composition were known. It might be necessary to make an addendum to add the European representative after the meeting in December, but this would be covered the following day and he did not think that there was a need to do anything further that day.

## DECISION

Endorsement of the Foundation Board composition for the Swiss authorities to be given upon confirmation of all details in terms of Foundation Board composition.

### **4.3 Standing Committees**

#### **4.3.1 Memberships 2009**

#### **4.3.2 Absenteeism and penalties**

THE DIRECTOR GENERAL said that article 8 of the WADA constitution stipulated that members of the Foundation Board were allowed to nominate in advance one alternate to represent them at any Foundation Board meeting, and such alternate would have the same rights as the member, including voting rights. He would ask all of the Foundation Board members for 2009 for a list of those alternates for each Foundation Board member and, if the member could not attend the Foundation Board meeting, the alternate could attend as the member's alternate; but, if neither could attend, as the constitution was written, the person then attending would be an observer only, without the same voting or speaking rights or the benefit of having WADA funds paid to attend the meeting. This had been looked at very carefully and he wanted to make sure that it was understood by everybody. If there were any comments, he would be happy to hear them, but it was just to make sure that WADA did not find itself in the situation of having a Foundation Board meeting whereby a person sitting at the table was neither a member nor an alternate, but was voting. That could lead to all sorts of problems down the track. As far as the Executive Committee was concerned, the Swiss legal view was that it was also covered by the clause in the constitution, as all of the Executive Committee members were Foundation Board members. There was currently one exception: the seat held by Europe, whereby Mr Mikkelsen was not a Foundation Board member. That was allowed under the constitution, but the members might want to think about whether the process for the Executive Committee should be the same as for the Foundation Board, or whether there should be a different process, allowing, for example, Australia to represent Oceania rather than New Zealand (which was the case that day). This issue might be usefully discussed at some stage.

As far as the standing committees were concerned, they would be tabled the following day, and he had given a brief synopsis of the situation during his report, so that was an issue that would be covered; but, in relation to the membership of those working groups, the members would see in their files a small paper saying that there was a situation

whereby some people were nominated as members of such committees but never turned up. That was a waste of a seat and a nomination. He was suggesting that, if no reasonable excuse for absence was given to the chair in advance of the meeting, and if a member missed two meetings, such member should be taken off that committee. He asked the Executive Committee to approve that process so that there would be a protocol going forward. He thought that those points covered items 4.2 and 4.3.

THE CHAIRMAN asked if there were any comments on those proposals. Clearly, if there were statutes that determined who had a seat around the table and a process that allowed an alternate to be nominated, WADA should abide by those statutes, and had drifted a little bit away from those. There was always a need to extend the appropriate courtesies to ensure that WADA continued to operate as well as it possibly could, but WADA needed to abide by its statutes, and that was the proposal in respect of the Foundation Board members. In respect of the committees, there was no point appointing people to a committee if they were not prepared to turn up; therefore, the request made by the Director General was to consider approving the "two strikes and you're out" proposal in respect of committee members. In some of those cases, the committee met only once a year, so effectively two consecutive years of non-attendance could occur before the position was taken from a member. WADA wanted people to contribute rather than put their names down. Were the members happy to approve that proposal?

MR STOFILÉ strongly supported the proposal for all of the reasons set forth. Elections were on the basis of expectations by the participating countries and, if they were not properly represented, would be left out of the discussions and the equation of activities in which WADA was involved, so he very strongly supported the proposal.

PROFESSOR LJUNGOVIST said that the Olympic Movement supported the proposal, a principle that prevailed in many Olympic organisations, and he would expect that anybody who could not attend for two years would have the good judgement to withdraw automatically. That should be the normal procedure.

THE CHAIRMAN thought that there was broad support for the proposal.

#### DECISION

Proposal relating to standing committee memberships, absenteeism and penalties approved.

#### **4.4 Independent Observer Programme – future approach**

THE CHAIRMAN asked the Director General to speak to the paper before bringing it up for discussion.

THE DIRECTOR GENERAL said that the paper spoke for itself. The members should know that WADA was now using the Independent Observer programme in every event, apart from the Olympic Games, to run audits in the style that he had briefly described in his report, so that WADA was working alongside those responsible for the anti-doping programmes at major events and monitoring them for compliance with the Code and standards, and assisting them to achieve that compliance by ensuring that any mistakes that needed to be rectified during the event could be rectified. In relation to the Olympic Games, this was a matter to be discussed with the IOC, as WADA had a contract with the IOC to run a programme at the Olympic Games, so he was not asking for any approval, but was just pointing out the fact that this was the way he thought it should go with the Olympic Games and the other events. He had given Professor Ljungqvist one of the contracts for the Asian Games, and he had another one in relation to the Paralympic Games, so as to be able to talk to the IOC about an appropriate contract for Vancouver. He was not asking for a decision, but was putting the issue forward by way of information and, if there was any clarification required from the IOC, he would be happy to provide it.

PROFESSOR LJUNGOVIST confirmed that this discussion was already under way and the IOC was supportive of a change to the way in which the Independent Observer

missions took place. Since its inception at the 2000 Olympic Games in Sydney, the Independent Observer programme had improved over the years. It had been excellent in Beijing, and this emerged from the report, but he felt that a change along the lines indicated would probably be better for the future. It might be wise to exercise this type of audit-like observation at minor games where people might not be as experienced in anti-doping as at the Olympic Games. Auditing at the Olympic Games might, in some way, be a little difficult in that it could be hard to find people with more expertise in an auditing team than an Olympic team that had some 20 years of anti-doping experience. Nevertheless, he welcomed that type of cooperation in the Olympic Games and he had received the agreement reached between the Asian Games Organisation and WADA for the Doha Games which appeared to be a good basis for future discussions, so it would be possible to ensure that, for the Olympic Games in Vancouver, the Olympic Games would be audited as other games had been.

THE CHAIRMAN said that this was work in progress and, clearly, the organisers of any games had the prerogative, and WADA's experience was that the process that the Director General wanted to develop was a more constructive and effective outcome and those discussions would be ongoing with the Olympic Movement.

#### DECISION

Future approach for the Independent Observer programme noted.

### **5. Legal**

#### **5.1 Legal update**

MR NIGGLI stated that he wanted to point out a couple of issues, the first one relating to Operación Puerto and the Valverde case, which was of particular interest to the Olympic Movement. He was afraid that there had been no progress. Following WADA's win the previous year and the reopening of the inquiry, the judge had requested an expert opinion from a laboratory in Spain and, upon receipt of such opinion, had decided to close the enquiry. This had resulted in an appeal by WADA, the UCI and the Spanish prosecutor. He had learned the previous week that the judge, despite having decided to close the enquiry, had been requesting the help of another judge in Spain, for what he was not really sure, but it appeared that something was still going on, and he was trying to gain a better understanding of what this was. That was the current situation; he would be in Biarritz the following week with the President and would raise the matter again with the Spanish authorities. From a legal perspective, no great progress had been made.

This issue was linked to the Valverde case. WADA was still trying to obtain a blood bag, which was stored in the Barcelona laboratory, and had been seized by the Guardia Civil in Spain during the Puerto enquiry. An official request for the blood bag had been sent by the CAS to the Spanish judge, but this had been refused. WADA had appealed the decision. Another request had been made by the Swiss court to the Spanish court through a civil litigation agreement. This had also been refused, because the Spanish judge had considered that this was a criminal case and the CAS was considered civil rather than criminal, so WADA was still struggling on that front. The CAS had agreed to extend the deadlines to proceed with the case, so the case remained open, and WADA was trying to get hold of the blood bag.

There were several pending cases in his report, which he would not comment on, although one of these cases was no longer pending as there had been a decision the previous day. He was referring to the Pinter case, which dated back to the Turin Olympic Games. The athlete had been given a four-year penalty, which was excellent news, and the result of a joint appeal by WADA and the IOC. The members would also see from the pending cases that there were three pending football cases from Malta, and that raised a

red flag as to how this particular sport was dealt with in this particular region. WADA had spoken to FIFA about this, and FIFA also formed part of the appeal.

In the resolved issues, there were two pending cases before the Swiss Federal Court, one against a decision from Stadnyk, a wrestler, and another lodged by Dodo, a Brazilian football player. The first one, in his opinion, would not raise any new issues; the second, concerning the Brazilian football player, was raising a few issues, and it would be interesting to see how the Swiss court resolved these, in particular the role of a tribunal in Brazil which was a state tribunal but acting only for the football federation, so it had a hybrid status. This was being closely followed.

He thanked Ms Elwani for updating him on an issue in Egypt. Apparently, WADA had managed to protect its logo in Egypt after a lengthy process and fight. The logo was now protected in that country, which was very good news.

PROFESSOR LJUNGOVIST thanked Mr Niggli for his report, which contained a lot of interesting information. The Puerto issue was a little distressing, and he could not abstain from commenting on behalf of the Olympic Movement. It was very problematic for the IOC to see a case being obstructed in this way. He realised that the government was doing what it could to re-open the case, yet it reflected very badly on Spain as a whole and on the Spanish anti-doping activities, and raised doubts. He hoped that the judge in person also understood that, but it seemed not to be the case. Spain was such an important partner in the Olympic Movement and had a candidature for the Olympic Games coming up, so he would suggest that this matter be clarified in future approaches to Spain and the judge. It should be made clear that the WADA Executive Committee was unanimously behind re-opening this case, and this meant that the Olympic Movement was asking particularly for governmental support of the action being taken by WADA, although he understood the difference between the judiciary and the executive.

He had been interested to hear the recent decision on the Pinter case, but had to comment on the Dodo football case, which needed to be followed very closely. He had had experience with this tribunal before. The IAAF had had a case some years ago, resulting in the IAAF being prevented from proceeding with a case since it had concerned a civil court in Brazil and it had been impossible to proceed. Therefore, it would be very helpful if this precedence could be established by the Swiss court to determine the status. If this meant preventing the future proceeding of this case, in his view, this would be non-compliance with the Code. Was he right?

MR NIGGLI responded that, relating to the Puerto issue, he would do his utmost to convey the message to the minister, as the judge was not really willing to talk to WADA. As to the Dodo case, he was very aware of the issue; WADA had actually won the arguments before the CAS, which was good news, and was now defending the case before the federal courts, which would be interesting. In any case, he thought that the CAS decision was useful as the arbitrators realised that this was a key issue and the way in which it was drafted was actually helpful.

MR REEDIE strongly supported what Professor Ljungqvist had suggested as far as the Puerto case was concerned and, if the Executive Committee was going to make a unanimous recommendation to seek as much help as possible from the governments, perhaps this should apply in particular to the European governments, which were closer to Spain and, if there was a unanimous view that the world of anti-doping was being frustrated by a legal process in Spain, everything that could be done to unlock that should be done. It was not helpful at all that there was current debate in the media that the implicit problems of the Puerto case could run all the way back to the Olympic Games in Barcelona in 1992. This was actually getting worse by the day, and the only way in which it would go away would be through proper process and access to the material needed. WADA had tried and had been blocked. A strong statement from the Executive Committee backed up by the Foundation Board, and a request in particular for help from the European governments, would be extremely helpful indeed.

MS DE BOER-BUQUICCHIO reacted briefly to the appeal that had been made. She was naturally very concerned about this situation. The problem, as she saw it, was that, in Europe and many other parts of the world, the independence of the judiciary and the way in which it operated was a very important principle upheld by the governments. Therefore, she could not really see how any kind of intervention on the part of the governments could happen, so she expressed her reservation on the possibility for European governments to intervene in this respect. She was very sorry to say that, but it was based on an important legal principle.

THE CHAIRMAN added that he would be in Biarritz the following week and had already arranged a bilateral meeting with the Spanish minister. He fully understood the point made by Ms De Boer-Buquicchio (he came from the legal profession) about the separation between the government and the judiciary. That was not to say that there was not a way, and he would be having discussions that might enforce and endorse the strong views expressed that morning. In his country, there was a right to seek leave to appear in proceedings, which the attorney general had the capacity to do, but this did not automatically mean in any proceedings that the attorney general was granted leave. He did not know about Spanish law and would not pretend to understand it, but he would certainly be indicating this as an example possibly worthy of further examination in Spain. He might not be able to do anything; nevertheless, he would certainly convey the strong wish of the Executive Committee to have the utmost cooperation and support where possible within proper process.

MR STOFILÉ said that this was a very difficult situation; he fully accepted the fact of separation of powers and independence of the judiciary, a very important legal principle from Roman Dutch law, but cheating and doping in sport were very old, even older than the Roman Dutch law. When looking at the history of this ugly phenomenon, one could not help but notice the collusion of the state and its machinery, and this could go right back to the BC era, so it was nothing new. Of course, in the post-war era, it had become endemic and extremely ugly. He thought that WADA must be respectful of the autonomy of the judiciary, but these were human beings, and there was no such thing as a totally objective person, be it a judge or a priest or a pope. Of course, Dr Ratzinger had been his teacher in doctrine when still in Tübingen. There was nothing like an objective human being in these matters, and WADA should make its voice heard and say that it did not want its countries to regress into that ugly past, and he did not think that there was any country in the world that wanted to regress to that situation. He did not have a formula to interact in Spain regarding the situation; like the Chairman, he did not have specific knowledge of Spanish law, but he did think that WADA, being a non-component of the separated powers (parliament, government or judiciary), needed to make its voice heard, in the interest of humanity and the integrity of the countries and athletes. He was sure that WADA had the wisdom to find a way to do this. He had just wanted to express that. It was scary to read about these things, which quickly reminded everybody of ugly experiences of the past.

THE CHAIRMAN said that the legal report would be noted. He acknowledged the arrival of Mr Burns from the USA.

#### DECISION

Legal update noted.

### **5.2 WADA Statutes – Article 7**

THE CHAIRMAN said that the members had a paper in their files and would recall discussion of the matter at the previous Executive Committee meeting. The Executive Committee members had been asked whether they wished for further examination by WADA's lawyers of article 7 and further suggestions to be made. As a result of the decision, WADA had sought lawyers with the necessary expertise in this area to advise on the capacity for changes to be made in the context of by-laws and suggested change regarding the public authorities in particular. Ms De Boer-Buquicchio had mentioned

earlier in the meeting that she had some additional matters to raise in relation to the item. The report was there, and it was a question of what the members wished to do with it. It had been quite clear on the previous occasion that the sports movement had no wish to change the statutes. He asked that the members continually bear in mind during their deliberations that WADA was a Swiss-based private international foundation; it was not a government arm, and, therefore, the board of directors had the right to make the changes and, if there was a wish by the board of directors to examine any particular direction and report back, clearly the management would do what the board of directors directed. Having said that, he would be more than happy to open up the discussion.

MS DE BOER-BUQUICCHIO stated that she had had an opportunity to convey to the Chairman personally, and also during the meeting preceding the formal meeting of the Executive Committee, some concerns that she had in relation to the document in the file. She was very grateful to WADA for having put this item on the agenda, and for having taken the initiative to draw up a text that she regarded as a good first step towards review of the rules governing the organisation. She expressed this satisfaction, as it was an issue that had been discussed with the Chairman in Ljubljana in January, when discussing how to cooperate further in this area. After that meeting in Ljubljana on 25 January 2008, the Council of Europe had organised a series of meetings and set up a working group on statutory reform in which a number of member states had taken part. The last meeting had taken place the previous Thursday, and a formal position had been adopted on this paper. The statutes were very precise with regard to procedural questions, even extremely detailed, relating to the election of the chair and the decision-making process in the Foundation Board, and therefore she did not propose a revolutionary change to the statutes. Some issues could easily be incorporated into the statutes, and others could be addressed in the rules of procedure.

She had just heard that morning from the Director General a point that might also be usefully examined, and that was the question of the voting rights of members and alternates and the consequences of absenteeism, and all these matters obviously needed to be clarified in the rules adopted. She had said that this was a very important first step, but the opinion of the CAHAMA, which had looked at this matter, was that this was an issue that should not be addressed separately and without considering a number of other issues that were intrinsically linked to the procedure for the nomination by the public authorities representatives of candidates for the position of chair and vice-chair of WADA. By way of an example, she mentioned the issue of the quorum, which had arisen on a previous occasion. She was of the opinion that this was a very important issue not explained in the statutes. There was the issue of the secret ballot; there again, Europe recommended that a provision for secret ballots be included in the statutes or elsewhere. Then there was the issue of the relationship between the Executive Committee and the Foundation Board, which clearly needed to be clarified. All in all, there was a lot of substance that would need to be addressed, so she suggested that the document be considered as a proposal for a procedural rule or by-law; however, as it did not really address the issue of statutory reform, it would be good to take note of the document without commenting on it in particular, but the Executive Committee should not go beyond that as it was the basis for further discussion with WADA on a more comprehensive set of rules of procedure. This issue dealt specifically with the public authorities only, and she regretted that, as a result of this, the governments and the sport movement were considered as two separate legal instances within the WADA statutes, and she thought that it was important that a review of the statutes should be of benefit to the statutory organs as a whole.

In conclusion, Europe would like to continue discussing this with WADA, and Europe was ready to provide legal advice on the basis of long-standing experience on the statutes and legal provisions, and proposed convening a meeting as soon as possible with the WADA management to discuss the European proposals and to report back at the next meeting, which would take place in May.

Returning to the specifics of the proposal, MS ELLIS agreed that further discussion was necessary, but noted that the officials group had located some very specific problems, namely that there was no solution in the event of a deadlock between three candidates, but also that the document as drafted would lead to the outcome of there being a possibility that the government representative could be the candidate without the most support of government members. Regrettably, she did not have a solution to those issues, but she wanted to put on the record that there were some areas whereby there were significant concerns coming from officials and government members, and they needed to be considered in further discussions.

MR LARFAOUI said that he had listened carefully to the reports and comments, but this was a problem for the public authorities. Such an issue should be dealt with internally by the public authorities rather than making amendments to the WADA statutes. It was an internal public authorities issue rather than a WADA issue.

THE CHAIRMAN apologised, as he had not managed to hear Mr Larfaoui's comment.

MR STOFILE told the Chairman that Mr Larfaoui had said that this was an internal issue for the public authorities. He expressed his appreciation of the drafted document. It was a very good starting point and provided excellent discussion material, addressing issues that had been discussed for some two years now. He agreed with Ms De Boer-Buquicchio that this needed to be looked at in a more comprehensive manner than simply the election of the two authorities. It should also embrace the other issues that WADA had now come across, of absenteeism by those nominated or elected to the standing committees, and a whole range of other issues that had come up in the Director General's report. He also agreed that this must be work in progress and the regions must continue to interrogate this. He was also in agreement that the big area that needed interrogation was a mechanism to break a deadlock when this happened, and the second paragraph of item 2.3 did not appear to have a solution for this. It simply suggested taking the two nominated candidates to the Foundation Board. WADA also needed to take into account the two separate legal entities that constituted WADA. These were general principles that should guide the WADA members as they continued to interrogate this document. He supported the work in progress.

PROFESSOR LJUNGOVIST said that he had not intended to interfere in this discussion as he felt that the document in question was strictly related to government issues, but he saw that this was developing into a much broader issue, and he wished to announce that the sports side wanted to be involved.

MR BURNS echoed the words of Mr Stofile and Ms Ellis. He was still not sure what had to be revised or what had gone wrong. There had been an election and, as far as he could understand, the vast majority of the governments were perfectly happy with the situation; but, in the spirit of transparency, he supposed that one could always improve on things, and he would have no objection to looking at it, proceeding with caution and continuing to discuss.

THE CHAIRMAN stated that he did not pretend to give an answer to the point he was about to make from a legal perspective; but, when one went into something like a secret ballot, it seemed to him that one put in jeopardy the insurance policy that protected each person on the Foundation Board, the directors' and officers' liability or indemnity policy. It was impossible as he understood it to resolve for any insurance company, to say that it would protect an individual when it did not know what that individual had actually voted on or supported or had not supported, as it was underpinned by a secret ballot, so sometimes when one opened something up, one moved into certain stormy waters that could have unintended consequences. That should not be a reason for not doing it, he simply pointed out that it was not as simple as saying that it was time to modernise based on principles that might apply in other areas of administration; for example, in government, matters operated somewhat differently to the world of commerce. He reminded the members that WADA was a Swiss-based international foundation, and that was what should ultimately dictate how the statutes should be used to conduct WADA

business. He was hearing that there was a wish to continue to examine, and that was fine. The management would always accept the direction given to it by the Executive Committee. Ms De Boer-Buquicchio had indicated that there had been a discussion and some thoughts collated from such discussion in Europe, and he asked that she convey those matters to the WADA management, and that the management be empowered by the Executive Committee to examine the proposals that were forthcoming and then perhaps circulate some of those matters for further consideration by the members of the Executive Committee so that there would be a further report on the outcome of such consideration at the next Executive Committee meeting. Was that a satisfactory way forward for the Executive Committee? It would therefore proceed on that basis.

#### DECISION

WADA statutes to be the subject of further consideration and an additional report prior to any decision/amendment.

### **6. Finance Report**

#### **6.1 Finance update**

MR REEDIE said that relatively little had happened within WADA since the previous meeting in September, and enormous things had happened in the rest of the world which would affect WADA's financial situation. For those members of the Executive Committee present for the first time that day, he had provided the minutes of the Finance and Administration Committee meeting (admirably brief minutes of a long and detailed meeting), and he drew attention to the request that, going forward, WADA should increase the assumption of income on the basis of being able to collect more contributions than in the past. WADA was doing much better at collecting government contributions and the Finance and Administration Committee would assume going forward that WADA would collect 96% rather than 93%.

#### DECISION

Finance update noted.

##### **6.1.1 IT costs**

MR REEDIE said that one of the major items of expenditure with which WADA had been faced was how to update and replace technology operations. This had been looked at in great detail. The Finance and Administration Committee had assumed that the best deal would be to lease the equipment, because equipment went out of date so quickly, but it had become clear that that might not be the best idea. There was a separate paper on IT costs which he hoped to deal with before moving on to the other items, because the result of what he told the members would have a major effect on the 2009 budget.

MR NIGGLI stated that the purpose of the paper was to provide an update from the previous meeting, at which the members had been told that WADA would lease the equipment. This decision had been taken after consultation with various IT experts and also in the context of a very favourable exchange rate at the time of the deal. The amount in the paper was in Canadian dollars, and the amount in the budget paper was in US dollars. At the time of the deal, the exchange rate had been at 1.25, so WADA had saved almost 25% of what had been discussed two weeks prior to that. That was a substantial amount. The second reason was that the conclusion had been reached that the leasing would take place over a three-year period, but WADA would not own any of the equipment. Much of the equipment currently on sale would have a five-year duration so, for the two extra years, WADA would be able to use much of the equipment, and this would represent substantial savings in the operation. Overall, it had been determined that it would be far more interesting for WADA to proceed in this way and this was what

had been done with the approval of the Chairman and the Chairman of the Finance and Administration Committee.

MR REEDIE said that the operation would not work without good electronic methods of communication and systems. It was absolutely essential that this be in good shape for the operation of the agency.

#### DECISION

IT costs report noted.

### **6.2 Government/IOC Contributions update**

MR REEDIE said that the members would be able to see the absolute updated statement on contributions, and would see that WADA was now at 98.44% of all of the contributions that could possibly be collected. That was a splendid effort. The members would be able to see a list of those countries that had not paid. The report also showed a statement going back to 2002, noting which countries had paid, how much and when.

#### DECISION

Government/IOC contributions update noted.

### **6.3 2008 Quarterly Accounts**

MR REEDIE said that, in attachment one, looking at the assets figure, members would find that WADA held relatively modest amounts of petty cash in different banks and had been reducing cash holdings in banks and going into investment programmes with rather longer term investments (one year or two years) when the Finance and Administration Committee knew that instant access to the funds was not necessary. The committee had tended to use high quality and well rated government-backed bonds. He had not thought at any time in his financial career that he would ever be phoning and asking whether UBS was safe, but those were the sorts of questions being asked these days. All those in the financial world would have noticed that organisations (including the organisation with which he banked at home) that had been absolutely solid, sound institutions, had collapsed in very short periods of time. He had no reason to believe that any of that would happen, and had tried to be understanding that the possibilities might exist and be as sensible and cautious as possible with the reserve funds that WADA had.

For the quarter to date, the members would see that the surplus was about 4.6 million dollars to the end of September. Clearly, in the last three months, WADA collected very little money and spent huge sums of money. Looking at these figures on a quarter-by-quarter basis, there was enormous intake at the beginning of the year because the governments were contributing money early on in the year, and these contributions were matched routinely by the IOC through three front-loaded payments, and then there was a balancing payment at the end of the year.

Attachment two showed the actual against budget for the period to September 2008; he got this from Ms Pisani on a monthly basis so that he could tell how well or how badly WADA was doing month by month in comparison with how he thought WADA was doing. Some of the percentage figures looked strange; but, looking at the big ones, legal, for example, WADA had budgeted on 1.8 million in 2008 and then at the end of September had spent 1.784067 million so. Quite clearly, the assumptions on legal costs had perhaps not been as generous as they needed to be; nevertheless, he should say that WADA had not at any time eaten into the litigation reserve fund, and had been able to meet all legal costs almost on a pay-as-you-go basis. On page 3, regarding the Beijing Olympic Games and Paralympic Games, the Finance and Administration Committee had budgeted for 523,000 dollars. So far, the amount was 412,000 dollars, and he did not think that there was all that much more to come so, at the end of the day, the costs estimated for the period of the Olympic Games had been rather higher and had been brought in at lower cost, which was acceptable. With regard to IT, members would see

the ADAMS figures for the year. The budget was higher than the current situation, and he expected that ADAMS would come in marginally under budget. The IT costs and website maintenance, without going into the details, had all rather built up with the purchase and installation of new systems, but he hoped that all of this would be possible within proper limitations. In relation to education, on page 8, WADA was certainly not as fully committed on the educational research programmes in financial terms. There was probably some expenditure to come in relation to the youth programme, because it looked as if there had not been quite as much activity as there might otherwise have been from a purely financial point of view. On page 10, the Code figures were a little higher than the original budget of 600,000 dollars, and he put that down to the additional work that WADA was currently doing for people wanting help on fitting in with the 2009 Code, so work was being done in 2008 for the Code that came into force on 1 January 2009. In relation to operational costs, there was nothing about which he was particularly concerned.

All in all, this was a pretty good record of whether the Finance and Administration Committee, which had done the job in the first place, had got it right, and he thought that it was pretty well on track to bring in a set of accounts that would match the budget approved by the Foundation Board in November 2007.

#### DECISION

2008 Quarterly accounts update noted.

#### **6.4 2009 Budget**

MR REEDIE said that the committee tried each year to look at the strategic and operational plan that the Executive Committee and Foundation Board had approved, and tried to extract the financial implications of what the plan said, so it was not just sitting there and making up figures and saying that, if something happened, this might be the financial result. The committee tried to allocate likely expenditure on the basis of what the Executive Committee had told it to do. From his point of view, the important element in all of this was to be able to bring to the Foundation Board a draft budget for 2009. As he had said already, the committee would assume, on the contributions (and therefore the income) side, that 96% would be collected as opposed to 93%; it would assume an increase over the 2008 contribution figure of 4%; and it had reduced the overall increase in salary costs from a base of 5% to 4.5%. The one figure that he personally was a little questionable about, as he really had no idea at the moment what would happen, was the figure of interest income, because, if he understood government policy, governments would pull interest rates down as hard as possible to help offset economic conditions; then, quite clearly, WADA would not be able to invest its surplus cash at the happy 5%, 6% and 7% rates that it had been able to get to date. He assured the members that the committee kept on top of the situation on a very regular basis, but he did not think that WADA would get the higher rates and might not have 700,000 dollars of interest income.

There was nothing particular under the various budget headings; he did not think that WADA would spend as much on litigation the following year, and he sincerely hoped that the message that had been sent out loud and clear from the CAS in relation to Mr Landis would mean that athletes would understand that expensive attacks on the system, which was what Landis had done, would not be possible. The message was clear that the system was there and worked properly. He therefore hoped that litigation costs would be a little less. That was on page 3 of the draft budget (6.4 attachment two). Moving on to page 4, WADA was involved in an ever-increasing number of intergovernmental and sports meetings, so the committee had taken up the budget costs to reflect that. These meeting costs (Executive Committee and Foundation Board) cost more and more each year, which had something to do with the fact that airlines were banging up their prices left, right and centre. It cost more to bring everybody to Montreal to meet, and the committee had to budget accordingly. On page 7, members would see that the Executive Committee had approved the proposal to keep the research grants for 2008 at

the figure of 6,580. In relation to education, the committee had increased the education tools on the grounds that that department would increase its level of activities and, in percentage terms, education had seen the biggest increase of all the various department headings. Regarding operational costs, on page 10, these were up by less than 2% overall. The figures for the regional offices followed, and then, on the very last page, which was the interesting one, the members would see the projected cash flow over a period from 2008 to 2012 on certain assumptions, starting with funds that were available for expenditure at the end of 2008 of just over 8.3 million dollars. The 2008 accounts should, if everything went well, show a deficit of just over 2 million dollars, so the freely available cash would come down to 6.2 million dollars. Assuming 4% for 2009, the freely available cash would come down to just over 4 million dollars. Assuming 5% for 2010, the freely available cash would come down to 2.834 million dollars. Assuming 5.5% for 2011, the freely available cash would come down to 1.945 million dollars and, assuming 6% for 2012, the freely available cash would come down to 1.945 million dollars. In the knowledge that it took about 2.5 million dollars a month to run the organisation, one began to see that there was not much of a cash buffer. He had also, with violent currency swings over the past two months, looked at what would happen if some of the currency changes were maintained through the year. He was really interested in the rate between US and Canadian dollars, as WADA received its money in US dollars and spent a lot of it in Canadian dollars. At one stage, the Canadian dollar had been 1.20 to the US dollar, and then, about ten days later, it had been less than 1.15.

When drawing up the 2009 budget, the committee had assumed, just out of interest, that it would be 1.15 Canadian dollars to US dollars; if it was 1.05 throughout the year, the deficit for the year, meaning that WADA held slightly more of its unallocated cash, would be improved by about 328,000 dollars. If it was 1.10, the deficit would be improved (i.e. smaller) by 627,000 dollars and, if it was 1.15, the deficit would come down by 862,000 dollars. He had no idea whether that would happen, and he counselled the Executive Committee in assuming that it would because, as soon as one made such assumptions, they would inevitably be wrong. He had actually had the opportunity to go to Lausanne to discuss this with major Olympic Movement stakeholders, and he thought that the only sensible thing that could be done at this stage was to ask whether WADA could run for 2009 on a contribution increase of 4% and then look at it half-way through 2009 to work out what was happening. The assumption, to keep WADA solvent over four years, was an increase in the contribution rate of 4%, 5%, 5.5% and 6%, but that might not be necessary, in which case he did not see why WADA should lock itself into a programme of cost increases, which weighed on governments and the Olympic Movement (the Olympic Movement was not unaffected by the present economic conditions). He would like to put the budget to the Foundation Board the following day for approval, but the implicit increase in costs would be limited to 4% for 2009 and then the committee would come back and see how the world looked in six months' time.

THE CHAIRMAN suggested having a coffee break prior to inviting comments on Mr Reddie's proposal.

MR LARFAOUI asked Mr Reddie if he had understood correctly that the proposed increase was for 2009 only, and not 2010 and 2011.

MR REEDIE replied that a cash projection was shown in the papers. The 2009 increase requested was 4%. The Olympic Movement had said that it was comfortable with a 4% increase, but did not want any further commitment on different levels thereafter. The Finance and Administration Committee was perfectly happy to go ahead on the basis of a 4% increase for 2009, and then, in a very complex and changing situation, would come back to the Executive Committee in the middle of 2009 and say where it thought it was. The proposed increase was for one year only.

He thanked Mr Niggli and Ms Pisani in particular for the very high quality of service provided to the management and to him, and he had all sorts of figures before him showing the current relative worth of contributions compared to the relative worth of

contributions in 2002, taking into account inflation and exchange rate differences and, at the end of the day, he thought that the finances of WADA were pretty sound.

THE CHAIRMAN said that the decision sought was for the 2009 budget only to be approved so that it could be put to the Foundation Board for final approval the following day. Did he have the members' approval for that recommendation?

#### DECISION

Proposed 2009 budget approved for submission to the Foundation Board the following day.

### **6.5 Appointment of 2009 auditors**

MR REEDIE said that he would formally suggest that the Foundation Board reappoint PWC for 2009.

THE CHAIRMAN said that the recommendation was to appoint PWC as auditors for the year ahead.

#### DECISION

Proposal to appoint PWC as 2009 auditors to be submitted formally to the Foundation Board the following day for approval.

### **6.6 Additional funding proposals**

THE CHAIRMAN asked the Director General to briefly refer to the issue. If the Japanese representative wished to make any comments, he would be happy to give the floor to her.

THE DIRECTOR GENERAL said that WADA had been in discussion with the Japanese Government through the regional director in Tokyo and the minister's office in Japan and had concluded a contract that it hoped Japan would put on the table before the Foundation Board which would allow extra funding to be provided by the Japanese Government to WADA for explicit use in the RADOs in Asia, and that would represent a significant advance in the way in which WADA was able to receive Japanese funds. He was sure that the minister would want to say a few words.

The proposal relating to the extra contribution from France was to be made by the Foundation Board member the following day, and again was the culmination of some discussions that the President had held with the minister in France and WADA was expecting a gesture of 200,000 euros from France to go specifically towards the Athlete Passport project. Again, this was the result of some very decent gestures from France and significant discussions held with the representatives. These were the preliminary remarks; they would be developed further the following day, but he felt that it was important for the Executive Committee members to hear them.

#### **6.6.1 Japan**

MS UKISHIMA said that she wished to take the opportunity to explain the additional contribution from Japan to WADA. Since its inception, WADA had made a significant contribution to promoting anti-doping activities throughout the world; however, there were many countries and regions in which the arrangements for such activities were very insufficient and the anti-doping arrangements had become very important from the point of view of state policies. Taking this into account, Japan had decided to propose additional funding in addition to its national contributions, and wanted these funds to be used by WADA in order to assist anti-doping activities in Asia, more specifically to set up and support RADOs in the Asian region to assist those countries and areas in which anti-doping arrangements were not sufficient.

THE CHAIRMAN thanked Ms Ukishima. WADA acknowledged the generosity and support of Japan, and appreciated the benefits that would flow from the gesture.

THE DIRECTOR GENERAL added that hundreds of thousands of dollars (350,000 dollars for the first arrangement) were being talked about in relation to Japan, so it was a significant gesture. He thought that everybody should applaud that.

He raised one other issue relating to the funding of the regional office in Uruguay. The members would recall that he had been concerned in September that the Uruguayan Government had not kept its promise in relation to the payment of the office rental. The issue had been resolved and the government, following a meeting in Montevideo, had honoured the agreement totally. He was pleased to be able to report that.

He had also neglected to mention an item in his report in relation to the disciplinary committee for laboratories mentioned at the September meeting. There had been a request for WADA to prepare the rules for such a body. The management had done that, and a paper had been tabled, detailing the process to be followed in relation to this specific committee. It was working pursuant to the ISL, and was not a matter requiring formal Executive Committee approval, as it was a management approach, but it was one that he felt important to table so that, if there were any issues or discussion points that the members wished to raise, he would be happy to hear them. This was to deal with situations whereby accredited laboratories were not performing properly and were therefore subject to potential or partial suspension and, rather than leave this responsibility to the Laboratory Committee, which comprised experts, he felt that there should be a proper process. Secondly, he had wanted make sure that everything was established in a proper legal fashion. That was the background; it was a simple process, but it was easy to follow and would be put into place in the coming weeks.

THE CHAIRMAN informed the members that the paper was before them. It should have been brought up under item 3 of the agenda. Did anybody wish to say anything in respect of this? If not, he would ensure that the minutes noted the tabling of the paper under item 3, and that there was no need for any decision to be taken by the Executive Committee.

## DECISION

Additional funding proposals noted.

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

#### **7.1 Code compliance and implementation report**

THE CHAIRMAN asked Mr Andersen to speak to this item. He noted that the members had a paper on this, and he was sure that they had read it and, of course, he would give them every opportunity to make any comments they wished. Perhaps Mr Andersen would bring the members up to date, as he understood that there had been a change in the small hours of the morning, because chess had suddenly come over the line, and so there was an addendum to the sports that were in (or out) in the context of the outcomes of the compliance audit.

MR ANDERSEN said that he was joined by Mr Emiliano Simonelli, the main contact between WADA and the signatories, who had done a huge job keeping the contact alive in order to help the stakeholders. He started by saying that, based on the Executive Committee decision at the September meeting, the management had done everything possible to assist stakeholders and signatories to become Code-compliant; it had tried to avoid non-compliance and, if the members read the report, they would see that this was the case. There had been many contacts between WADA and the regional offices and each of the regions of the world to assist signatories to become Code-compliant. WADA had helped NADOs (including NOCs, which also acted in some countries as NADOs) to become Code-compliant, and had also helped the regional ADOs, also including NOCs, to

become Code-compliant and, through the model rules of best practice, had helped the IFs to become Code-compliant.

As the members would see from the report, the status on the IF rules was very good. The outstanding issue for the IFs was enforcement of the rules. There might be programmes and rules in place but, without action based on the rules, no progress would be made. Action based on rules was necessary, and this had been measured against the out-of-competition testing programme.

As the members would be aware, the Code stipulated that the Code would be monitored every second year. This should have been done in 2006; it had been extended to 2008, so this was the first compliance report. At the previous meeting in September, he had tried to limit the scope of the report, so as not to go too far in the assessment of the signatories, which meant that WADA was reporting on Code-compliance only for IFs and NADOs, including those NOCs acting as NADOs. WADA was monitoring the major games organisations to a certain extent through Independent Observer missions. The Executive Committee had decided that, for RADOs, this would be monitored through their process in getting countries up to speed. The Executive Committee had defined extraordinary circumstances for excuses by saying that, if there was a specific sport record and history for one nation, that might be taken into account, as well as the political and economic situation in the country in question. The Executive Committee had also defined minimum requirements in order to be in line with the Code, and had agreed that certain provisions had to be in place for a body to be deemed Code-compliant: there were provisions in the Code for ADRV; there were provisions in place for sanctions; in line with the Code, there must be a right to appeal for WADA; there must be respect for the four or five international standards for the following year; and there must be an out-of-competition testing programme in place.

Progress had been made since the previous Foundation Board meeting in May. There had been 26 additional Code acceptances received from NADOs and NOCs, 49 additional NADO/NOC rules received, and five additional GAISF non-IOC recognised IF rules received. The number of rules in line was 50 for NADOs; one additional Olympic IF set of rules had been declared in line, and four additional IOC recognised IF rules had been declared in line. In addition, nine GAISF non-IOC recognised IF rules had been declared in line. At 5.43 a.m. that morning, there had been a recent development. On Friday, a letter had been received from the Flemish minister for sport and education updating WADA of developments in the Flemish community. He had reported to the Executive Committee in September on the complex situation in Belgium. The Flemish community was now becoming Code-compliant, so the Flemish community would not be declared non-compliant. WADA had received information and confirmation from several IFs stating and confirming that they had out-of-competition testing programmes in place. WADA had received evidence from the Chinese Taipei NADO that it had rules in line; there had been several meetings with the Russian NADO, to show that it was in the progress category. The same applied for the Andorran anti-doping system and, lastly, WADA had received just prior to the weekend information from UNESCO that the Austrian Government had decided to reserve itself against the TUE standard for the following year. Austria had been in progress, which meant that the rules for 2009 had been reviewed; but, if Austria now reserved itself against the TUE standard, WADA had no other possibility than to deem Austria non-compliant. He would provide a more comprehensive report the following day to the Foundation Board and was asking for comments and the recommendation of the Executive Committee to go forward to the Foundation Board the following day with the report.

MS DE BOER-BUQUICCHIO thanked Mr Andersen for his very good report and all the activities carried out by WADA in order to ensure Code compliance. She noted that he had made reference to the case made by the Flemish community; this was currently on page 11 in the recommendation and where there was reference to progress towards compliance, which Mr Andersen had simply repeated. She updated the members in that, the previous day, she had received a letter from the relevant minister of the Flemish

community informing her that he had addressed a letter to WADA on 22 October, and she had not heard Mr Andersen referring to the letter. According to the information, which she was not in a position to assess, the Flemish community believed that it was already Code-compliant. The minister would like this to be acknowledged in the final decision, so she requested that there be consideration of the arguments made by the Flemish community in order to find that the Flemish community was indeed Code-compliant.

THE CHAIRMAN said that Mr Andersen had mentioned receipt of the letter in question.

MR ANDERSEN responded that, in paper 7.1 on page 11, under 2.2, the third paragraph stated that: "in the past weeks, the Flemish community has provided WADA with full evidence that it is in the process of working in order to enforce...". This was the letter dated 22 October that had been received by WADA and, based on this letter, WADA was proposing that the Flemish community be in the progress category as there were still outstanding issues. He had also referred to the two letters sent to Ms De Boer-Buquicchio and Mr Mikkelsen, again referring to the letter of 22 October.

THE CHAIRMAN said that, notwithstanding the letter, there were still matters requiring further work to be done before Mr Andersen could change the recommendation.

MS UKISHIMA said that those organisations not in compliance with the Code required a great deal of attention; therefore, WADA should give a strong warning to the non-compliant IFs and NADOs and, if they did not appear to be improving the situation, their status should be revoked.

PROFESSOR LJUNGOVIST said that he wished to reflect on what WADA had been doing. The first comment related to timing; that was WADA's own fault, that WADA had conducted compliance reporting related to the Code, which would be in operation for one more month only. Then there would be a new Code, and WADA should change the timing of the compliance exercise and relate it better to the Code that would be in place. As to those organisations now being suggested to be declared non-compliant, how would they be followed up during the course of the coming period? If there was a new compliance exercise in two years' time or three years' time or four years' time (whatever WADA decided but, for the time being, the frequency was to be every two years), would they not have the chance to be compliant before then? Or would they have a chance to be compliant within a few months, should they then fulfil the requirements?

He wished to follow up with a remark, since he still had the floor. To be declared non-compliant was probably a very serious decision with respect to those being declared non-compliant, not least for IFs, but certainly for NADOs, this meant that they were being deprived of some rights to be part of the Olympic Games, which was a serious consequence, as everybody could understand; therefore, he felt that it was necessary to follow up on the non-compliant organisations very carefully and within a short timeframe. It was also, in a way, WADA's own fault during this exercise. It had been decided earlier that smaller NADOs under the umbrella of RADOs would automatically be declared compliant if they had entered under the umbrella of a RADO, even though they themselves might not be compliant, whereas the IFs did not have such an umbrella. This meant that there was the risk of double standards when deciding whether or not an organisation was compliant. Those remarks had to be addressed to see how it might be possible to rectify the situation whereby an organisation could be declared non-compliant and others (which might also be non-compliant) could be declared compliant because they were protected by a particular umbrella. He would come back to specific suggestions later on. He hoped for some clarification in relation to the remarks and questions that he had raised.

THE CHAIRMAN said that the concern expressed about the timing one month before there was a revised Code to take effect had not been lost on WADA, and it was something that had to be considered going forward. Did WADA want to do this in two years' time, as the current Code required, or did it want to think about better timing? One of the outcomes of the discussion might well be to ask the management to give

some thought to that and provide further recommendations going forward. He wished to add one more point, and he did not wish to labour it, relating to the point that there was treatment through RADOs of NADOs, the bulk of which were NOCs in smaller parts of the world. If there were that IFADO that had been spoken about previously, that would have covered so many of these IFs in the same manner as the RADOs, so there was a way forward if the Executive Committee could resolve some of the difficulties. Was it a different treatment now? Well, it certainly would not have been had WADA been able to establish IFADO, the anti-doping umbrella group for IFs, which would take a similar role as that of the RADOs. He did not labour the point but noted that there was a way of dealing with what appeared to be a discrepancy.

MR ANDERSEN stated that the Director General would respond in greater detail on the compliance period, but he wished to refer to the current situation, whereby WADA was reporting on the current Code that had been in force for the past four years. He recalled that this was not fully correct, as many stakeholders were being reported on for the next revision of the Code. WADA had said that countries were in progress in terms of achieving Code compliance, and had taken the 2009 Code into consideration. For instance, Greece had recently passed legislation in its parliament and made it clear that it would not make sense for Greece to pass a law taking into consideration the 2003 Code; Greece had taken the revised Code into consideration, and WADA had proposed that Greece be in the progress category, saying that it had evidence that Greece would be in line with the revised Code for 2009. There were certain other examples in that respect as well. In terms of following up on ADOs, the IFs or NADOs/NOCs, he intended to report at every Executive Committee and Foundation Board meeting on the situation regarding Code implementation. Those were interim reports, not formal reports on non-compliance, but they would be provided so that the members were aware of the situation throughout the world.

THE DIRECTOR GENERAL said that the WADA management was looking to the activities that it might be asked to undertake in 2011, as the management had to consider whether the Executive Committee would ask it to conduct another review of the Code, hold another world conference, etc. The management was also looking at the conference of parties through UNESCO, as UNESCO had a different monitoring programme in place for reporting. The aim was to bring harmony and he would try to bring some ideas along those lines to the Executive Committee meeting in May, to ask the Executive Committee whether it would want the management to consider further consultation, so as to revise the Code again in 2011, for example. As soon as the management received that direction, it would be able to suggest that the next compliance report might be three years away. That might be more satisfactory in terms of another revision. He was really alert to the fact that WADA could not sit still; progress had to be made. Mr Andersen was dead right about the monitoring team; it was a 365-day operation. WADA would continue to monitor with an emphasis on helping those who were non-compliant or did not have their rules in place to get to the finish line rather than the start line. The WADA management was now planning for 2011 bearing in mind all the other things that it had to do because, from a staffing and management point of view, this was one of the major projects that WADA had.

PROFESSOR LJUNGOVIST asked whether he had understood correctly that, after each Executive Committee meeting, there would be an opportunity to declare an organisation compliant should it meet the standard, or would it be necessary to wait for three years? It was of vital importance for any federation that was declared non-compliant. He could see that there were five Olympic IFs that would not be able to take part in the next Olympic Games should their non-compliance be considered non-compliant even though they might be compliant at the time of the Olympic Games.

THE DIRECTOR GENERAL said that this was a matter on which the Executive Committee should advise the management; however, he thought that the management should provide a regular report to the Executive Committee so that, if they were non-compliant, stakeholders could become compliant within a period of weeks and months

and the management would update and record appropriately. Nevertheless, this was up to the Executive Committee to decide. The management would carry out what the Executive Committee told it to do.

THE CHAIRMAN asked whether the Executive Committee wished to put forward a proposal that, as and when any organisation became compliant, such compliance should be acknowledged by WADA and stakeholders notified of such compliance at that time. Currently, as the Code required, this was done every two years, but he thought that Professor Ljungqvist was alluding to the fact that, if the gymnastics federation became compliant in February, he would want the IOC to be told in February that such federation was compliant. Was that Professor Ljungqvist's wish?

PROFESSOR LJUNGVIST said that the Chairman had drawn exactly the right conclusion. He had been about to make the same proposal himself.

THE CHAIRMAN felt that everybody at the table would support that proposal. If that was Professor Ljungqvist's proposal, he would put that motion. Did the Executive Committee agree? The motion was that, should any of the organisations deemed in this report to be non-compliant become compliant going forward (with specific reference to the five Olympic sports noted on page 11 as being non-compliant), such compliance should be acknowledged by WADA and stakeholders notified of such compliance at the time.

MR LARFAOUI was somewhat confused. Had he understood correctly that these organisations were being declared non-compliant but, when they became compliant, would be declared as such? Why not postpone the decision to the next Executive Committee meeting and give those non-compliant organisations time to become compliant?

THE CHAIRMAN said that his interpretation was that the Code required WADA to provide a report on compliance. This had been worked up over a long period of time; there had been the interim reports from the previous November, May and September, and WADA had finally reached the landing that the Code required. This was not to say that WADA would not continue to help the organisations concerned, but WADA was bound under the Code to make a report on the issue of compliance. He did not think that WADA had any right under the current Code to defer decisions, although it could change the motion that Professor Ljungqvist had put forward, to say that, instead of immediate compliance, the matter could be deferred until the next Executive Committee meeting some months later. He would not mind that.

MR REEDIE said that, looking at the history of the past years and the way in which various stakeholders had come to the acceptance of codes and processes and everything else, and looking at what was being suggested, the only breach that seemed to affect all of the IFs, be they Olympic, recognised or non-recognised, was the problem of out-of-competition testing, which was the only area in which there appeared to be a difficulty. Looking at the NADOS, there were different breaches, some of which were that they had not bothered to send WADA any rules at all and, in some areas, WADA knew that they did not exist or did not work. He did not think that WADA could forgive that, and he thought that there was a provision in the Code, under 23.4.6, for this: "WADA shall consider explanations for non-compliance and, in extraordinary situations, recommend to the stakeholders that they provisionally excuse the non-compliance". He thought that WADA would be legally within its rules to say that all of these federations were currently compliant; the only breach under extraordinary circumstances was the creation of a very small element of out-of-competition testing. He did not know how one did out-of-competition testing for sled dog, but the federations could be given a period in order to come back to WADA and show that they had grasped the liability and tell WADA what they were doing about it. That followed Professor Ljungqvist's suggestion, which was that there would be a compliance tick, or good mark, at each Executive Committee meeting going forward. It seemed to him that, if WADA could identify that there was only one area in which there was a particular problem for all of the IFs, WADA would

make itself look slightly silly by saying that a whole range of sports was non-compliant. He spoke with some authority as he had spoken to seven sports applying for membership of the Olympic programme, and one sport in particular (which would remain nameless) had said that it had a problem with out-of-competition testing as it cost a lot of money. In real terms, that was an issue. Only two nights previously in Turkey, speaking with the president of an IF, which would be compliant, he had received exactly the same message, and that federation would actually seek additional funding from the IOC to pay for more anti-doping programmes. Almost on a temporary basis, legally within the Code, WADA had the power to say that it was extraordinary that all of these IFs were struggling with out-of-competition testing, WADA would make them compliant and then they would have to come back and say that they had the simplest of out-of-competition testing programmes in place by, say, 30 June the following year.

THE DIRECTOR GENERAL alerted the members to the fact that this was a Foundation Board decision in relation to the compliance report and not an Executive Committee decision. Any interim reports would need to go before the Foundation Board with a recommendation from the Executive Committee.

MR DE KEPPEL recognised the obligation in the Code for WADA to submit a compliance report at the end of the year; as many of the speakers had said previously, this obligation was certainly compatible with a report outlining the current status of discussion. He had a question on the process and another on the legal consequences of declaring organisations non-compliant. Before taking a decision, it was necessary to be clear as to the consequences of declaring organisations non-compliant. As had been heard, some of the federations or NADOs had recently been informing on latest developments. He knew that some IFs had been trying to get in touch with WADA, and some IFs had sent correspondence to WADA to explain why they were not compliant. He did not find these IFs in the last-minute list that had been submitted, so he really had a problem adopting a decision without knowing whether all of the requests made by the IFs had been taken into account. He did know that many IFs present the previous week in Lausanne for the IF forum had certainly been open and constructive in their approach and he strongly suggested giving them an additional chance to become compliant, as it would be necessary to face the consequences of a WADA Foundation Board decision of non-compliance, not only for the IFs, but also for the NADOs and NOCs.

MR BURNS expressed support for the statements made by the Japanese minister. He reminded everybody that this was not something new. There had been considerable pressure by the governments to ask for equal time for compliance every time the issue of dues was brought up and, to adopt some of the arguments made around the table, the countries had been or could be totally in compliance but for the fact that they had not paid, so one might say that they were compliant pending payment. This had been going on for a long time. He looked at American league baseball. His understanding was that this organisation had been determined not to be Code-compliant and did not take anti-doping seriously. He did not know how long WADA would go on. Patience was a virtue, but this had been going on for a long time and, if there were no sanctions, he submitted that nobody would take WADA seriously when it came to these issues. He applauded Mr Andersen for his work. He thought that it was completely fair to say that, when the organisations did become compliant, they would be recognised.

MR LUNN said that, obviously, it was important that everybody become compliant. A lot of work had been done, and there was more to do; however, the question was, once somebody was declared non-compliant, what was the appropriate sanction? Was it more appropriate when reporting to the IOC that a warning be issued and, at the same time, a reminder that there were additional consequences of non-compliance (as defined in article 23.5 of the Code), and then fuller sanctions be applied by May or June 2009, so there would be a transition?

THE CHAIRMAN assisted the Executive Committee by pointing out some issues relating to the question of out-of-competition testing and the five IFs mentioned on page 11 as being Olympic IFs. For example, with regard to the out-of-competition testing for

modern pentathlon, the federation had conducted one test in 2008. If there was a programme evident and progress on that programme, Mr Andersen and his team had been prepared to give the IFs a tick. In the context of gymnastics, which was a massive sport in the Olympic Games, and a very well established sport worldwide, following the correspondence of 8 October, the IF had promised to establish an out-of-competition testing programme, but there was no evidence whatsoever that it had done so. So, coming back to Mr Reedie's point on extraordinary circumstances, and Professor Ljungqvist and he had had this discussion the previous day, what was the threshold at which Mr Reedie would say that WADA could excuse and what was the point at which WADA could say that nothing had effectively been done? Handball had never undertaken any out-of-competition testing; the federation had acknowledged that it did not have a programme in place that year, and had said that it would put a programme together for the following year. At that time, it was not there. What was the sanction? That was the question being asked. Looking at the very first page, the members would see that WADA's responsibility was to issue a report, and that report was given to the IOC, the IPC, IFs and major event organisations. The sanctions were in the hands of those organisations; WADA did not have any sanction power in respect of non-compliance. He guessed it came down to saying that he believed that Professor Ljungqvist had a very good point in relation to an interim approval process, but what would happen to those named as non-compliant in the report sent forward? The facts would be known to the world, whatever the Foundation Board decisions; therefore, no doubt some publicity would be generated. Cricket had more resources than most of the sports in the world, yet it was not in compliance. This was just too bad, from his point of view as a great lover of cricket. The organisation should get its act together and do something about it, as it had had ample opportunity, and the team at WADA had gone backwards and forwards trying to assist those organisations, and would continue to do so. It was the decision of the Executive Committee in terms of the recommendation to go forward to the Foundation Board the following day.

MR KASPER referred to non-compliance and the consequences for the athletes, as nobody had spoken about this. If gymnastics was declared non-compliant the following day, this meant, theoretically, that gymnastics would not be present at the next Olympic Games. If he were an athlete, he would immediately give up his sport. There were thousands of training camps, and these would be cancelled if gymnastics were no longer to be included in the Olympic Games. He asked everybody to think about the consequences for the athletes. He had a question concerning Austria and the reservations that had been expressed with regard to the application. What were these reservations? As everybody knew, he had problems with Austria on a daily basis, and the world championships were coming up. His federation would have to exclude the Austrians, who won all the medals anyway. His second question related to sled dog sports. Was the out-of-competition testing performed on the athletes or on the dogs? It sounded ridiculous, but he thought that in-competition testing was performed on the dogs, or was it also performed on the mushers?

MR ANDERSEN assured Mr De Kepper that every document, e-mail and telephone call received had been reviewed and taken into consideration when drawing up the paper and, as could be seen from the addendum, the changes had been made right up until the last minute. He thought that Mr De Kepper was alluding to one federation, from which WADA had received a letter just prior to the weekend, and WADA had not changed its assessment, as there was no evidence of any progress in the anti-doping activities, such as out-of-competition testing.

He told Mr Kasper that testing in sled dog was for athletes and dogs. He could go into detail about dog testing but perhaps this was not the right place to do so.

As to the Austrian situation, on Thursday or Friday, WADA had been alerted by UNESCO in Paris that the Austrian Government had issued a reservation against the use of the 2009 TUE standard; this was a very important part of the anti-doping programme

and, if Austria could not abide by the rules of the TUE standard, WADA could not possibly consider Austria compliant.

PROFESSOR LJUNGOVIST thought that WADA had to be in touch with reality and able to declare organisations compliant once they had become compliant rather than waiting three years. The mechanism for that needed to be worked out, but he suggested that the Foundation Board be asked to delegate such a decision to the Executive Committee.

He asked about the additional paper on the Russian situation. Many would feel that it was very difficult to understand in view of the difficulties that anti-doping organisations had experienced when trying to conduct doping controls in Russia. Doping control officers had been taken into custody and doping control samples had been taken away from them. This was a notorious problem that had affected a number of IFs. He was sorry that he had to speak clearly about this. A more provocative sort of non-compliance action was difficult to think about; however, to declare such behaviour in compliance with the Code would be impossible to explain.

MR LARFAOUI proposed that the Executive Committee, in its presentation the following day, give a deadline to all IFs to submit programmes, until the end of February or March, for example, so if, by this date (the end of March), the IFs had not fulfilled the necessary conditions, WADA would be obliged to declare them non-compliant.

THE CHAIRMAN said that it was necessary to determine the recommendations on pages 11 and 12 of the paper, and some variations of those recommendations resulting from discussion. One of the variations had been adopted. There had been some subsequent conjecture on the proposal put forward by Professor Ljungqvist as to whether or not WADA should tick compliance instantly and delegate that authority to the management, which could be January or February or March 2009, or wait until the next Executive Committee meeting and have the Executive Committee vested the authority to tick it off. Probably that would be a more appropriate way of dealing with it. Would Professor Ljungqvist be happy to see that variation on the original proposal that he had put to the Executive Committee, giving authority to the Executive Committee to acknowledge compliance as and when such a report came to the Executive Committee?

PROFESSOR LJUNGOVIST responded that he thought this was what he had said. The Foundation Board could delegate this to the Executive Committee.

THE CHAIRMAN said that there were some other matters. Should WADA seek a stay of proceedings? He asked the members to bear in mind the fact that, in the context of what flowed from the recommendations of WADA, it was a matter for the IOC, the IPC and the IFs as to what sanctions, if any, they imposed. Was it considered to be more beneficial to take pressure off by deferring the decision, or to keep the pressure on by saying that, at the moment, an IF was non-compliant, even though this might be solely in relation to the out-of-competition testing (was it 20 tests a year in modern pentathlon? Certainly one was not terribly satisfactory)? But, if left non-compliant after the weekend of meetings, surely this would give those sports a greater incentive to rectify any embarrassment or difficulties, the difficulties being that they were technically outside, in the case of the Olympic IFs, the capacity to compete in the next Olympic Games, but they had the capacity to rectify that very quickly by complying and providing the appropriate evidence. He thought that the alternative was there: proceed with the recommendations put forward. He thought that he would like to hear more from Mr Andersen on Russia, and perhaps this should be examined a little further. The recommendations and variations were now down to a deferral for a period of time, despite the enormous efforts made to bring these people to the party, alternatively to proceed with the recommendations there on the basis that they were outside compliance but with the capacity to come quickly back into compliance if they provided the appropriate evidence. He would have thought, for example, for gymnastics, that this sport had some fairly good resources to rectify the problem fairly quickly.

MR ANDERSEN stated that Russia was technically part of a RADO. It had been taken out of that category simply because it was too important and too big to be left to the

automatic excuse that some of the RADO countries had. Not all the RADO countries were non-compliant. Many were compliant. There were several issues relating to Russia, one being the general legislation in terms of transport, import and export of samples, an issue that had been addressed by WADA and in Russia, but was also an issue with other countries. There were other countries that had restrictions on the conduct of doping controls by foreigners. In terms of anti-doping legislation, he felt that Russia was on the right track. There had been several meetings with the Russian authorities; it was a matter of consideration whether this should be in the progress category or not, but it was felt that Russia was moving in the right direction and this was the recommendation.

MS DE BOER-BUQUICCHIO said that she was in agreement with the proposal as planned, but indicated that this was yet another example whereby the rules should be clear, to the extent that the Executive Committee was now discussing issues that had originally been intended for decision by the Foundation Board. It was important to know in advance who was in charge of what decision, and was an example of what she had stated earlier that morning when arguing for a comprehensive review of all the rules.

She had referred to the case of the Flemish community, and understood that the WADA management considered that this was not a case of non-compliance, but rather work in progress, and felt that, in the decisions now being taken, WADA talked only about compliance or non-compliance and that this type of situation would be completely forgotten. In legal terms, although she appreciated a gesture towards the Flemish community and recognition of progress, she thought that it was an "either/or" situation, and she wanted to be reassured that the case in question would not be forgotten when updating the Foundation Board on the issue of compliance.

THE DIRECTOR GENERAL said that the issue in relation to the power of the Executive Committee was not in question. The Foundation Board had the compliance report and would make a decision. The Executive Committee could make a recommendation to the Foundation Board, and that could include a recommendation that, going forward, the Executive Committee be granted the authority to do what Professor Ljungqvist was suggesting, but whatever was decided by the Executive Committee would have to go to the Foundation Board for approval.

THE CHAIRMAN asked whether there were any alternative motions anybody wished to put forward. He therefore sought approval of the motions contained in the recommendations in the paper, particularly recommendations 1, 2 and 3. Did the members wish that the recommendations be put to the Foundation Board the following day?

MR LARFAOUI said that he was not in agreement with the proposal to declare those IFs listed as non-compliant. He had proposed giving those IFs a deadline for compliance.

THE CHAIRMAN said that he had given the members the opportunity to amend the recommendations, and nobody had done so, which was why he had fallen back on the recommendations.

MR LARFAOUI responded that he voted against the proposal.

THE CHAIRMAN asked Mr Larfaoui to make an amendment to the proposal that the Executive Committee might consider.

MR LARFAOUI said that he had proposed a deadline for compliance. His amendment had not been accepted, if he understood correctly.

THE CHAIRMAN stressed that he had never ruled out any suggestion, but had indicated that members might wish to amend the recommendations. He thought that Mr Larfaoui was suggesting (regarding item 1 on page 11, in the paragraph before item 1, in accordance with article 23.4 of the Code, that WADA recommended that the Foundation Board declare non-compliant the following signatories) that the Olympic IFs be declared non-compliant if they were not in compliance by a particular date the following year.

MR LARFAOUI said that this was exactly what he had proposed.

THE CHAIRMAN asked whether, after the words "Olympic IFs", the proposal was "providing they were non-compliant by 31 March 2009".

MR DE KEPPEL said that, if this was to be applied for the Olympic IFs, it should be applied for all of the IFs.

THE CHAIRMAN fully agreed.

MR LARFAOUI also agreed.

MS ELLIS asked a very simple question. She was not quite sure what the rationale was, thinking that, for those that had not been compliant to date, by giving them an extra few months, that would make the difference. She had not heard the argument that, for all the time this had been out there, sports had not made the progress towards becoming compliant. What was going to change that now?

THE CHAIRMAN answered that he did not have the slightest idea. There had been numerous letters, telephone calls and e-mails, and the sports had been told that they would be declared non-compliant at that meeting if they had not made the necessary arrangements. Would that change because WADA had given them more time? He could not see the logic there either.

MS ELWANI said that she was quite surprised to hear about the sports movement not making progress, because WADA had been waiting for years for the governments to make progress and sign the UNESCO Convention. Asking for a few more months for the sports organisations to comply was fair. Some governments had not even bothered to sign a piece of paper. She was sorry, but she got a little defensive, because a lot of athletes' careers would be at stake. Thousands of athletes competed as members of a federation. Compliance with the Code was important in relation to the Olympic programme and participation in the Olympic Games, so a request for three or four months was not a huge request. Of course, the next time, WADA would not be flexible, but one could at least give them a chance.

PROFESSOR LJUNGOVIST thought that Ms Ellis's question was very relevant, but one answer was that he was sure that the compliance team had been working very carefully with the IFs. One reason as to why deferral might be wise was that WADA would employ, as of early January, a new person in Lausanne who would be responsible for IF relations, who had previously been a member of the IOC staff and knew the IFs very well, and he was sure that this person would exercise the necessary pressure sought by WADA to make sure that compliance would be achieved within the next few months. It was a matter of staffing to a large extent.

MR REEDIE believed that the other answer to Ms Ellis's question was that, around the table, and in the staff, WADA had probably the best people in the world in the anti-doping movement and, looking down at the list of recognised and non-IOC GAISF members, there were several very small sports that had not done any anti-doping work at all, but the system of recognition for them to move in the sports movement, particularly towards Olympic inclusion, necessitated that they become compliant with the WADC and, in many cases, the reality was that this went into the "too difficult" column and was not dealt with properly. WADA had known, as had all the major federations, that the date was looming and that something should have been done, and there was less excuse for the Olympic federations than for the small ones; but, in practice, he saw nothing wrong with saying to them at the end of the meeting that they had been given the benefit of the doubt, that WADA had not declared them non-compliant because the only offence they all had was in the out-of-competition testing area, and they had until whatever date it would be next year to get it sorted out. He thought on balance that WADA's credibility would be marginally enhanced with these people on an understanding view as opposed to being slightly controversial and telling them that they should have read the papers and, since they had not, they were non-compliant. He did not think that anything would be lost; he thought that WADA would partially gain, and he would provide an alternative motion if necessary, rather than being forced to vote yes or no. The

alternative motion could be that these federations not be declared non-compliant but that they must satisfy WADA by a specific date that they had in place the mechanics to run a proper out-of-competition testing programme. He had to rely on advice on what to do with the NADOs and he thought that the Austrian issue was truly a problem.

MR BURNS said that it was obvious that there were two camps around the table. The federations had to be put on notice. His government had been in the front page of the paper every week, with headlines stating that it had not paid its dues, or that its dues were not sufficient. He thought that the public had a right to know and the athletes had a right to know that their federation was not in compliance. Mr Kasper had talked about gymnastics. He could promise Mr Kasper that, if this were featured in the major papers in his country, in 24 hours the federation would be in compliance. Until WADA did something, nothing would happen. This had been discussed year after year; the staff had been asked to make a determination, and WADA had stated that it would be meeting in November to determine compliance, and now some federations were not in compliance. It was silly.

THE CHAIRMAN said that WADA had certainly watered down the black and white approach that many believed should have been taken, and had made the decision in September to try to develop a system to report to stakeholders to indicate that significant efforts had been made and, with further work, the objective would be achieved. It came down to how many last warnings should be given. What sort of encouragement could be achieved by postponing drop-dead dates? It was the Executive Committee members' wish, and he could not let Ms Elwani go to the point of saying that there continued to be confusion in relation to the UNESCO convention. A country such as Rwanda would never ratify the convention in his lifetime, and he looked to a country such as Kiribati, which had managed to send two athletes to Beijing. Kiribati was more interested in whether or not it could manage to maintain a hospital for its 18,000 inhabitants than ratifying the UNESCO convention. That was not to excuse governments; but, in many instances, because of political upheaval, it was a very difficult thing for them to understand the need to do it. Even in his own country, which he would hope and argue was an enlightened country, there had been a process for ratifying this and every other convention that had required parliamentary committees, debates, travel to examine further, reports back to ministers and subsequent debate in various houses, and it was not simply a case of having a meeting and ratifying. Many of the countries were fighting a great fight in doping; whilst it was necessary to put pressure on UNESCO ratification, it was necessary to understand that, in many cases, it was not diminishing the efforts being made to fight the cheats. He wondered whether anything would be achieved by delaying the drop-dead date. Having said that, it was the wish of those who had spoken in favour of postponing the drop-dead date to put a motion that amended the existing motions to be put to the Foundation Board the following day. Perhaps this had been best clarified by Mr Burns. He thought that the date was 31 March 2009.

THE DIRECTOR GENERAL said that, if it was the will of the meeting to defer the decision on compliance or ask for a further report before making a decision, it ought to be deferred to the next Foundation Board meeting, because the Foundation Board had to take the decision on compliance. The date of 31 March would not achieve anything. The members ought to be aware that there was extremely strong media interest in this compliance report. It was a document that was already public and, if the Executive Committee were to go to the Foundation Board and recommend a deferral, there should be some very strong talking points as to the reasoning behind such deferral, to enable the President to answer media questions and the management to answer questions. An issue of the credibility of WADA was at stake; when WADA said it was going to do something and then deferred, it had better have good reasoning for deferral.

THE CHAIRMAN said that he did not see any particular reason why there would be any difference in discussion at the Foundation Board meeting in November or at the meeting in May. He sought some support to be able to explain it and he did agree that, in the context of WADA's capacity to achieve its objectives, it was certainly putting at risk the

impression that it would give to the world if it was seen as having a deadline that, when it appeared to be too hard to comply with, was extended. Having said that, he could not argue with the right of the members of the Executive Committee to make recommendations.

MR KASPER said that, if the Chairman was looking for an excuse, the new Code would be coming into force on 1 January 2009, and everybody would accept this as an excuse.

THE CHAIRMAN asked why the Executive Committee had not made that excuse in May 2008 instead of giving the management so much work. WADA had already watered down the black and white, in or out approach to it by getting a set of circumstances allowing for changes to be made and thresholds to be reached regarding progress on compliance in out-of-competition testing as well as other aspects.

MR BURNS suggested, in response to the Director General's concern, simply voting and counting votes and then the ministers and representatives of the IOC could explain individually why they had voted.

THE CHAIRMAN put the amending motion first. It must be uniform, and the actual report to the stakeholders would be deferred until the May 2009 Foundation Board meeting and, in the meantime, WADA would continue to work to bring into compliance all those signatories who were currently non-compliant. He had a technical problem before actually asking the members to vote. As of 1 January, there would be a revised Code; he did not know what the management would do in relation to compliance on a revised Code as opposed to the 2003 Code.

MR REEDIE said that the only issue here was out-of-competition testing.

THE CHAIRMAN put the motion, asking all those in favour of the amendment to raise their hands. He noted seven votes. He thought that the amendment was carried. Four members were against, so the amendment was carried.

THE DIRECTOR GENERAL asked for direction on what the Executive Committee wanted in a compliance report in May 2009, as he did not know how long the Executive Committee wanted WADA to work on an out-of-date Code. He wondered whether the members were really saying that there should not be a compliance report at all until the revised Code came into effect. Otherwise, the Executive Committee was asking the WADA management to do a lot of unnecessary and ancient work, and it had enough on its plate already. Staff members had been working full time on this at an expense of more than 600,000 dollars. Maybe the Executive Committee wanted the management to start again in 2010 with the monitoring.

THE CHAIRMAN said that he had flagged the technical difficulties. He suggested that the members think about this over the lunch break. The Executive Committee needed to give direction to the WADA management as to what was required.

MR BURNS said that he thought that the vote had been six to four, with the exception of Mr Stofile voting against.

THE CHAIRMAN responded that he had also counted six to four.

MR REEDIE said that, from the information before the members, as far as the IFs were concerned, the only monitoring was for each of the IFs listed, asking them to provide WADA with a satisfactory report on out-of-competition testing by the date specified, failing which they would be determined non-compliant.

MR LARFAOUI said that he had noted seven to four in the vote.

THE CHAIRMAN said that he was not sure that the intervening mechanism had any value now. The Vice-President had reminded him that there had been a motion approved to allow compliance to be taken forward to the next meeting; he thought that the decision on compliance had been deferred, but he would be happy to take that motion again on the next occasion. Perhaps the Executive Committee should vacate the motion approved earlier in light of the successful amendment.

PROFESSOR LJUNGOVIST commented that he had seen one motion as complementing the other, namely that it should be possible to declare an organisation that had been deemed non-compliant compliant during the course of the coming period, rather than waiting three or four years. It was important to keep track of reality. Those organisations declared compliant at the next meeting could become non-compliant in a few months' time, so a mechanism had to be in place to deal with that. It was a matter of procedure and principles.

THE CHAIRMAN concluded that Professor Ljungqvist wanted the motion approved to stand.

MR BURNS asked whether the Foundation Board would vote the following day.

THE CHAIRMAN confirmed that it was the Foundation Board's decision, so the recommendation approved by the Executive Committee would be put to the Foundation Board for determination. The recommendation would be the amended motion. It stayed, it was approved, and there was no need for it to be altered. It had already been carried and would be put forward as a recommendation to the full Foundation Board the following day.

#### DECISION

Recommendation regarding the Code compliance and implementation report to be put to the Foundation Board for approval the following day.

### **7.2 World Anti-Doping Code, International Standards and Model Rules update**

MR ANDERSEN said that this item provided an update on what tools were available to help ADOs become Code-compliant. There were the standards, guidelines and model rules of best practice. These were online, in order to help all those wishing to become Code-compliant.

THE CHAIRMAN noted the update.

#### DECISION

WADC, International Standards and Model Rules update noted.

#### **7.2.1 International Standard for the Protection of Privacy and Personal Information**

THE CHAIRMAN said that a paper had been circulated some days previously among the members as a result of the meetings that had taken place recently in Europe, attended by a number of members of staff. Mr Cooper was a member of the legal firm that had been assisting WADA in the preparation of this particular issue, and the standard itself. He indicated that there had been a discussion the previous evening with the European representatives which had enabled WADA to canvas a number of matters of concern to Europe. Those matters would be raised that day. The discussion had involved Messrs Niggli and Cooper and himself, and it had been helpful, providing WADA with a better understanding of where the European representatives were coming from. He could deal with the issue by asking Mr Niggli to speak to the paper, or he could ask for comments, including those from Europe, and then ask Messrs Niggli and Cooper to respond to any matters raised. He would prefer the second option, which was to open the matter up for discussion rather than have a statement made before discussion took place.

MS DE BOER-BUQUICCHIO stated that she was very grateful that the item was on the agenda of the Executive Committee and the Foundation Board. The issue had been

discussed at length during the September Executive Committee meeting and indeed needed further attention. On a procedural point, the Chairman had just referred to the addendum that had been added to the file, which most of the members had received while they were already heading to Montreal. It was a background note and she regretted that the document had been made available at such a late stage. Apart from the fact that documents should of course be sent three weeks in advance (there were very strict rules for that), if she had had the document one week previously in Strasbourg when the CAHAMA had discussed the matter in the presence of the European community and WADA management, it would have been much more efficient.

She wanted to address the substance of the matter. She was very happy that drafting of the standard had taken place because, in all fairness, data protection had previously been virtually not an issue in the anti-doping world and had since become an issue, representing considerable progress for data protection. It did give a framework for those countries with low levels of data protection. She said that Europe wanted a standard (not necessarily this one) and had been very much at the origin of this drafting process and was happy that the process had commenced and hoped that the standard would be operational as soon as possible. "Operational" implied a solid reference for ADOs to make it possible to respect privacy and personal data when conducting anti-doping programmes. It was very important to bear in mind the fact that the athlete and his or her rights were at the heart of this concern. During the drafting process, two challenges had been indicated, the first being that of meeting the requirements of the necessity for anti-doping with the respective rights of the individual for the protection of privacy, and that the standards would be applicable worldwide and for the sake of harmonisation, the overriding objective of WADA. The current situation was that the version of the standard adopted on 20 September was not quite ready to meet all of these challenges, in her view. The highest data protection authority in the European Union, which was the Article 29 Working Party, was not in a position to support this standard. The Council of Europe data protection committee shared the same opinion; therefore, the European Member States could not ignore such decision. In fact, some of the Member States had already received clear instructions from their national data protection authorities not to use the standard after 1 January 2009. The Monitoring Group of the Council of Europe's Anti-Doping Convention, as well as the European member states, had unanimously echoed the situation by proposing to postpone the adoption in September. They had been unsuccessful. What they now wished to do was request a moratorium on its entry into force. She had just witnessed the willingness of the majority of the Executive Committee to delay the implementation of the decisions on the table for a couple of months, and she thought that, when talking about something such as data protection, one could definitely conceive that this attitude would be similarly followed.

She wished to provide some concrete examples of where she saw incompatibilities. She would not be exhaustive but would simply give a few examples. The first example had to do with the principle of proportionality. It was necessary to protect the "participants" against the disproportionate disclosure of personal information, and it was necessary to make sure that the content given by the athlete was free and informed and not considered as a kind of blank cheque to use the information for a purpose other than that initially intended. Legal provisions restricted such a disclosure and, with the present standard, it was not possible to prevent entities located in third states from disclosing personal information according to the Code, and Europe would have to adopt complementary regulations to implement or restrict the implementation of the standard in compliance with its legislation. Another example was the duration of retention of information. Data protection rules required a maximum duration of retention of information and that was not currently the case in the standard.

Another crucial example was the question of the right of participants with respect to this personal information (article 11). The exceptions foreseen in this article to the right of participants to access information relating to them were very wide and not defined

with precision, whereas, according to European legislation, exceptions had to be defined by law, so definitely further clarifications in the standard would be required.

The members should not spend more time analysing why the standard was not applicable. Europe had always wanted to offer assistance, and wanted to clear up these issues before the adoption of the standard. She repeated that this was not solely a European issue; it was a global standard, and that was what it should be. Borders were largely meaningless when it came to the circulation of personal data, especially in the IT society. She summed up that the European position could be summarised as followed: Europe did not want to slow down the process of improving data protection in anti-doping on a global scale and wanted to see the standard operational as soon as possible. Europe was aware that the standard could be a huge step forward and that countries with a lower level of data protection legislation could not change their system overnight. Europe could not currently implement that standard and had the right not to apply it before it became compatible with national and European data protection legislation. It would not be able to work with the standard and that would definitely be detrimental to further harmonisation. It was therefore asking for a moratorium in terms of entry into force, and she wished to point to the consequences of harmonisation once again, knowing that the vast majority of IFs were based in Europe. Europe continued to engage in constructive dialogue with other continents and the WADA management on how to amend the standard and Europe welcomed the fact that WADA had expressed its readiness to do so at the previous Executive Committee meeting. In May, Europe had expressed concern about two issues: the too hasty adoption of the standard and the need to cooperate with the EU Article 29 Working Party.

She concluded with some proposals. First, she would like other continents to be involved in the debate; it was long overdue and she was glad that the issue had been discussed the previous day at the senior advisers' meeting. She offered to host a further round of consultation and drafting meetings between the Council of Europe, the European Commission and WADA, and finally had a question on the relation between the standard and the UNESCO convention, which would surely have an impact on the public authorities, in particular since its status in relation to the UNESCO convention would be decisive regarding its binding or non-binding character. She was ready to answer questions if her introduction had not been sufficiently informative as to the concerns of Europe, but she said clearly that the CAHAMA proposal, which she had flagged, was that Europe was formally requesting a moratorium on the entry into force of the standard and, if this was not acceptable, would simply have to say that it could not apply the standard as of 1 January 2009.

THE CHAIRMAN said that Ms De Boer-Buquicchio had foreshadowed, in the context of her request for a moratorium, that she might wish to move a motion to vacate the decision that the Executive Committee had already taken, and he would give her the opportunity to do so at a later point. For the moment, he would like to hear from others.

MR NIGGLI stated that he wanted to give some information on the context, before handing the floor to Mr Cooper, who was a leading expert in the field, to deal with the more detailed issues. First, in the paper circulated that week, he heard the comments from Europe, and said that WADA always tried to give the papers in advance; however, the Executive Committee members should know that, as agreed, WADA had requested a meeting of the working party on Article 29, so as to be able to discuss the issue further after the previous Executive Committee meeting. This had been done in September, and the earliest date for a meeting had been 12 November, so a meeting had taken place the previous Wednesday, and then on the Thursday and Friday, this had been discussed by the monitoring group and CAHAMA, and the outcome of the CAHAMA discussion (discussed without WADA's presence) had been received by WADA the following Monday. Providing a paper three weeks in advance when the meeting had taken place with the authorities only one week previously was therefore somewhat difficult. The issue had been discussed by CAHAMA without WADA's presence. The CAHAMA had confirmed a decision taken by the monitoring group of the Council of Europe on the Wednesday,

when WADA had been meeting with the Article 29 Working Party in Brussels. The last point he wished to make before giving the floor to Mr Cooper was that the standard had been approved by the Executive Committee in September on the basis that it was a minimum standard and, in the event of any conflict between the standard and national law, the national law would prevail. If the members recalled the discussion that had taken place, it had been felt that this would not be a problem for Europe, as European law would always prevail, and therefore the rest of the world would benefit from the standard without it creating a problem for Europe. That was the basis on which WADA continued to work.

MR COOPER said that he thought that it might be useful to begin by putting the request into context. The process of consultation with respect to the standard had begun in 2007; since that time, two very robust consultation rounds had been held, generating over 80 contributions from interested stakeholders, governments, sports bodies and so forth. It was fair to say that the process had involved substantial European input; in fact, WADA had probably received more comments in substance from a European perspective (and had been very diligent in responding to that input) than any other region in the world. WADA had received consultation submissions directly from a number of European DPAs and ADOs that had consulted with their DPAs. WADA had received a submission from Belgium from which he would quote later on. WADA had received a submission from the French Government, the German Government, the Swiss DPA and the Danish ADO, which had consulted with its own DPA. In 2007 in November, WADA had met with the heads of the German and Swiss DPAs, as well as representatives of the Canadian privacy regulatory body. As the Council of Europe members knew, meetings had been held with them over 2008 on a variety of issues, including ADAMS and the standard. At various meetings, the DPAs had also been represented. Most recently, WADA had had to engage in an exercise to respond to a paper that had been prepared and released by the Article 29 Working Party, a very influential body of European authorities in the EU. Unfortunately, that paper had been based on an early draft of the standard and, when WADA had consulted with the Article 29 Working Party to provide that information and asked that it reconsider and look at a more recent draft of the standard, it had declined. WADA had received extensive European input and had been very attentive to that. This was only natural, as Europe had some of the most advanced laws on data protection in the world.

It was probably worth saying something about the latest developments. Based on the previous Executive Committee meeting, the management had been mandated to meet with the Article 29 Working Party or at least a sub-group of that body. It had only been possible to agree on a date for that meeting on 12 November. The meeting had taken place the previous week and, frankly, somewhat to his surprise, the standard had not actually been discussed, although that had been the precondition for WADA meeting with the group. A very rich and informative discussion had taken place, but this had tended to be on issues unrelated to the standard, and the interaction between data protection laws and anti-doping practices, which he felt was unfortunate and frankly a little frustrating.

He responded to some of the points that had been made and some of the themes that came up in discussions with European representatives. The first issue was the claim that the standard was incompatible with EU law. "Compatible" should mean equivalent to European law. The members of the expert group assisting WADA had really not felt that this particular argument resonated or had a strong rationale; in particular, the experts had been very clear about making this a minimum standard, but had also had a concern to make sure that the standard would not conflict in a direct sense with any existing national legislation and, for that reason, a close reading of the standard would actually bear out the fact that it could not conflict; where there was a national law that would conflict with any of the standards, the national law prevailed, and this was consistent with the production of an international standard. For instance, he read from the current version of the standard, article 4.1: "In cases where compliance with this international standard may cause any anti-doping organisation to breach other applicable laws, those

laws will prevail". Article 5.1 said that: "Anti-doping organisations shall only process personal information provided such processing does not conflict with applicable privacy and data protection laws", so the argument that somehow the standard might be conflicting with national laws did not have much strength.

Alternatively, another theme that kept coming up was that the standard did not go far enough. He had been clear throughout that this was a minimum standard, but he thought that "minimum" was actually a very pejorative term. Looking at the standard, the members would see that it was actually an extremely robust standard, extremely dominated by European principles and norms. In fact, the very framework of it was not very far off from the directive, so it was quite a high standard. At the same time, there had been no intention to ape any national or regional law. The experts had been mindful of the fact that WADA was trying to adopt a global and international standard, and there was no precedent for this at all. If there was one, he would like to see it. The belief of the experts in the group that had worked on this was that, when implementation took place, the rest of the world, bearing in mind the fact that probably three-quarters of the sporting nations did not have data protection laws and practices, would find this an enormous challenge. And it had been a little surprising to hear the argument that implementation should be postponed coming from the very quarters that actually had such laws to protect their athletes, despite the fact that he had pointed out that this would be extended to regions that did not have any legal protection.

Just to finish up, he was often asked why WADA should not postpone, and what the harm in delaying was. He wished to turn the question on its head, and asked what postponing would really achieve. Looking at it from a European perspective, this was a minimum standard, so European laws would continue to provide the additional more robust protection that was afforded by national laws. If one was worried about conflicts, there could not be any. But what would one lose by delaying? First, one would certainly not be providing any type of protection in terms of privacy or data protection for three quarters of the globe. Secondly, there was the question of delay. He did not want to be too pessimistic, but he thought that history should be the guide. When the EU authorities had sought to generate consensus on something such as a code, the timeframes had been quite lengthy. To date, in the 13 years since the adoption of the EU directive, the original statute that served as the origin for EU data protection laws, there had been one industry code that had been blessed, and there were five that were still pending. In terms of adequate nation determinations, there had been three: Switzerland, Argentina and (in part) Canada, plus two Channel Islands. That was it in 13 years. One had to bear that in mind if one was going to take on board the fact that there would be a delay.

The final point was that the group's mandate had always been and would continue to be to work with regulators in Europe and elsewhere in terms of strengthening this minimum standard. With respect to the points raised on the principle of proportionality, this was actually embedded in the standard and was a very important principle. If European ADOs needed to do more in terms of reflecting proportionality in their actual practices, then that was a requirement of their national law and, by all means, the standard said that they should do that. Similarly, with retention of data, the data protection directive did not say that one had to specify a maximum period of time for which data had to be held, but said that it had to be relevant for the purposes for which it was used. One of the questions that had come up often in discussions was why additional guidance could not be provided in terms of particular data that needed to be retained. The group was very happy to entertain that thought, but had determined that it would not try to account for all the different contexts within the standard for which data would be processed in the anti-doping context, as this would be unmanageable. Similarly, with rights of information, the group was quite proud and believed that article ten provided very robust information disclosures to athletes, in some cases, disclosures that were arguably not mandated by European data protection laws.

He concluded, as he knew that many submissions had been received from European contingents, all of which had been extremely helpful and taken on board, that he thought that the Belgian DPA, which had been around for a long time and was very well respected, had got it right. The DPA had told the group the following: "The commission takes the view that, given that the standard imposes minimum standards, divergences between these rules and Belgian legislation basically do not constitute a danger for the privacy of sportsmen, provided that the competent Belgian governments take into account these differences during the implementation of the standard into national law. The commission takes the view that the present standard contains a number of basic principles, which can unmistakably contribute to a better protection of the privacy of the sportsman". He thought that this really summed up the principles behind this initiative and the desired objective.

THE CHAIRMAN asked if anybody wished to contribute or comment.

MR STOFILE said that this was a very difficult debate, for the same reasons that had been raised in September. His understanding of the issues raised by Europe was that the standard, as adopted in September, was not adequate for their needs. He thought that this had been addressed in September by using the term "minimum threshold", meaning that, for those with no standard of any kind, this was the threshold to be used, and those with other standards that might be much higher than this particular threshold were welcome to use their own national laws (as was the case in Belgium).

The second thing he remembered saying was that, after the adoption of the minimum threshold, WADA and Europe should engage in a consultative process until a way of finding each other on these issues could be found. He was told that this had taken place, but he did not know how it had not got anywhere, as he would have expected that, when having an argument about proportionality, the two systems would talk to one another, one arguing for the need for better proportionality, the other explaining whether or not it had got there or how it thought it would be possible to get there, in other words, to prepare the issues, taking one issue at a time and dealing with it, until working out differences, if there were any, and how to reach a synchronised understanding if differences existed.

The Executive Committee had also accepted in September that it would be better to have a minimum threshold in order to give certainty to the situation rather than to have nothing. In the absence of a format to protect the rights of the athletes, they would never be protected. In real terms, there would be no such protection and so, in September, the Executive Committee had said that the minimum standard would be put in place, giving a platform to those with nothing. The decision had been on the basis of an ongoing engagement until reaching some kind of consensus. It seemed to him that such engagement had taken place but consensus had not been reached. He was scared of what would happen if those who did not have a standard just carried on, waiting until one day everybody was in agreement on a higher standard than that considered suitable as a starting point. He did not know how one could pass secondary education examinations before passing primary examinations. Better clarity on what these real issues were was necessary so as to be able to deal with the matter in a more meticulous and succinct manner. It was necessary to compare apples with apples, following which discussion could take place. He was as blindfolded in November as he had been in September. The principle seemed fine to him: in the absence of nothing, put in place a minimum threshold. If it was too low, raise it. That was what they did in high jump and pole vault. He did not see why he should vote against his initial decision in September. He stood to be convinced. He was getting no sense that something new had happened.

MS ELLIS stated that she was grateful for the explanation, which had been really helpful in terms of process. She added to the remarks by saying that countries in the region she represented had been doing a lot of work in order to get up to this standard, and it sent a really dangerous message to these countries that had started work to then say that WADA was going to push it back and not keep the pressure on. It was very important to emphasise the fact that this was a minimum standard, and countries should

obviously be encouraged to move beyond that and put in place higher standards, but WADA should be very reluctant to further delay decisions to put in place the standard for those countries that had nothing.

MS DE BOER-BUQUICCHIO said that she had a problem with the definition of a minimum threshold, which was being used all the time by all those who had argued in favour of simply applying the standard. It was the wrong terminology, because she wanted the right basis from which to start. It was totally impossible to protect privacy a little bit. Either one protected it or one did not. She had given some examples, upon which she could elaborate, including sensitive information, retention duration, athlete consent and transmission of data. All of these were basic principles, and it was not just about going beyond a relatively low standard, although she had never suggested (and she wished to correct this immediately) that a minimum standard could not be a high standard. It was simply a wrong approach to look at it that way. On the basis of the examples that she had given, she would rather talk about incompatibility with European law.

She wished to react briefly to what she had heard, namely that there had been consultation, but this did not imply agreement of the states, and she was pretty sure that those governments that had been consulted had raised questions and mentioned problems, and she did not know what WADA's answer was to those questions. As to the fact that there had clearly been some lack of communication between the Article 29 Working Party and WADA, she thought that efforts should be made to share all information appropriately and that documents should be made available when they were available to the Article 29 Working Party. She would simply recommend better communication in this respect. She had heard that WADA had been absent when CAHAMA had discussed the issue; nevertheless, the monitoring group had had an exchange of views with WADA.

Coming back to the Article 29 Working Party and the interaction between this group and WADA, it was true that other items had been raised, but this only reflected the sensitivity of the debate and the scope of the implications of this standard and its implications for data protection.

She asked members to imagine what would happen if a court decision in Europe were to be issued against the use of the standard because of the incompatibility found with European legislation. That would be a disastrous situation and would represent a major setback for anti-doping in general. This was not about Europe against the rest of the world; it was about diverting the risk of a court decision (and she could not exclude that) that would jeopardise the entire principle and the system being defended. She had heard Mr Stofile say that he wished to stick to his position. In answer to his question as to why the standard should be postponed, she asked what the hurry was. There were other means to provide advice on data protection, there were good practices available in the member states and these could be shared in order to get those countries up to a standard that would be compatible with the high standard that every athlete in every state was entitled to have. Just as Mr Stofile was not convinced, she had not been convinced by the arguments she had heard around the table, and maintained her proposal.

In relation to the question of a potential challenge from the European courts, MR COOPER responded that the standard was superseded by national law, so any challenge would be based on a national law, and not on the standard. In response to why this should be rushed, he said that the members had before them an opportunity to impose a very real set of privacy protection laws globally. This had never happened before, and would be a real step forward for data protection law. That was perhaps not an opportunity that the members should pass up on. The members should also bear in mind the length of time that might be required if they were hoping to get broader consensus; even within Europe, it was very challenging to get consensus on these issues, let alone globally.

He certainly endorsed the point that WADA had to continue to work with data protection authorities. It was very clear to him that this was an issue that was not going to go away and, in fact, it would have an impact on other issues beyond the standard relating to anti-doping in sport, so the members should be aware of that.

MR STOFILE said that the lawyers had said what he wanted to say in a more sophisticated manner. He had been going to ask the question that, if there were such practices, these should be shared. This was the problem. If there were alternatives, these should be shared, and then he would have a better understanding of what was lacking. The minimum standard was a minimum standard precisely because it was lower than the high standard, but there had to be a starting point.

THE CHAIRMAN said that this had been a good discussion and appreciated the contributions. The position was that a decision had been taken at the September meeting. A rider to that (which was not part of the discussion) had been that there would be ongoing discussions with Europe. Those discussions had taken place and had not led to any conclusions. The paper also indicated that discussions would continue, and the Article 29 Working Party was due to convene again in February, which was the next opportunity that WADA would have to talk further. Having said that, there was a decision. Did Ms De Boer-Buquicchio seek a resolution that would vacate the existing decision on the basis of certain other factors? If this was her wish, she should put forward such a motion. He would seek somebody to second the motion in this instance. He had not sought anybody that morning, as it had been very obvious that others would second the motion; however, in this instance, he thought it necessary.

MS DE BOER-BUQUICCHIO said that she wished to make one last remark in relation to the argument she had raised in her second intervention about the risk of a court decision that would find against the international standard. She reminded the members that she had put a question as to the status of the international standard in relation to the UNESCO convention. This was a pretty important point. If the standard as adopted was an annex to the UNESCO convention, it would presumably be a binding text and that would certainly have implications. If it was simply an appendix, it would be non-binding. She would very much like to have an answer to that question before she could speak in relation to the procedural proposal that she might or might not make.

MR NIGGLI said that the UNESCO convention had two types of attached documents, one mandatory and the other non-mandatory. The decision to have a document in one or the other category was a decision taken by the assembly of parties of UNESCO. This was the case when they had drafted the convention, and was not something in which WADA had had a say. The parties had decided which document they wanted to be mandatory and which document they wanted to be simply as a reference. He thought that the answer to the question was that this was a debate to be taken in UNESCO, which would have to take a decision.

MS DE BOER-BUQUICCHIO requested a moratorium on the entry into force of the standard.

THE CHAIRMAN asked if anybody would second the motion.

MR STOFILE asked whether Ms De Boer-Buquicchio could explain what should be used by the international community during the moratorium.

MS DE BOER-BUQUICCHIO replied that, pending entry into force, there would be intensive contact between WADA and the Article 29 Working Party and the Council of Europe, but there would be no legal text; however, as she had hinted a moment ago, it would be possible to share information about good practices so that stakeholders in need of information could get information, which WADA would surely be able to provide. The international standard for the protection of privacy and personal information was, after all, the result of work that had consisted of collecting information on this issue. In her proposal, there would be no text governing this matter until the standard entered into force.

THE CHAIRMAN said that the simple answer was that three-quarters of the countries of the world's athletes would have no protection until such time as there was an adoption of the standard.

MR BURNS seconded the motion.

THE CHAIRMAN asked all those in favour of the motion to raise their hands. He then asked all those against to raise their hands. It was clear that the motion was defeated.

MS DE BOER-BUQUICCHIO believed that this did not prevent her from tabling the motion the following day.

MR NIGGLI replied that this was a matter for the Executive Committee.

THE CHAIRMAN said that the decision of the Executive Committee would be put to the Foundation Board for ratification or approval. He believed that, when that particular motion was put to the Foundation Board for approval, Ms De Boer-Buquicchio would have the right to speak. He asked the Director General to assist him.

THE DIRECTOR GENERAL said that the Foundation Board had delegated the authority to approve standards to the Executive Committee, which was why the Executive Committee approved the standards and amendments to the standards. The Foundation Board could make any decision on any topic and override the Executive Committee if there was a resounding majority. He could not see that this could be legally prevented; however, it interfered with the delegated authority.

THE CHAIRMAN supposed that this would come under other business. He would not be able to prevent Ms De Boer-Buquicchio from taking the floor the following day. Perhaps he could talk about this after the meeting with Ms De Boer-Buquicchio.

#### DECISION

Proposal for a moratorium on the entry into force of the International Standard for the Protection of Privacy and Personal Information rejected.

### **7.3 IWF compliance issue**

THE CHAIRMAN informed the members that they had a paper in their files, providing them with an update on the matter. There were also some recommendations, which required some ongoing contact between IWF and WADA. He did not propose to ask Mr Niggli to speak to the paper; it was simply to be noted.

PROFESSOR LJUNGOVIST gave some additional information relating to the possible DNA analysis of samples collected at the Olympic Games. He had just been informed that the samples were unfortunately only serum samples and not full blood samples, which meant that they might lack sufficient numbers of cells for the identification of any DNA. The members should not be disappointed should such analyses not provide further information.

THE CHAIRMAN said that the report would be noted.

#### DECISION

IWF compliance report noted.

## 8. Department/Area reports

### 8.1 Science

#### 8.1.1 Health, Medical and Research Committee Chair Report

PROFESSOR LJUNGOVIST informed the members that he would be very brief. It had been a long day and the members had an exhaustive report before them. He reminded the members that, in addition to the international standards related to the list, laboratories and TUEs, which had been reviewed and decided upon by the Executive Committee in September, they might be asked to ratify some technical documents over the next few months before the next Executive Committee meeting.

Also, there had been a previous request for a report to the Executive Committee on the outcome of research projects over the past few years. He had suggested to Dr Rabin that, if the members were still interested (25% of the budget had been spent in a reasonably good way), the report was there. Dr Rabin and he had gone through it the previous day, and he suggested that the Executive Committee be given that report.

THE CHAIRMAN said that he had not intended to cut out the presentation on that audit. It was important to understand just how far WADA had progressed in terms of the research grants.

#### DECISION

Health, Medical and Research Committee Chair  
report noted.

#### 8.1.2 Athlete Passport/blood parameters

THE DIRECTOR GENERAL informed the members that this was one of the most important activities carried out by WADA. The members would see from the paper that the management was nearly in a position whereby it could publish a booklet of protocols (this would be done within the next week or two). It would then be shared with experts engaged by WADA throughout the project development so that it could be approved by them and debated, so that the final document could be published early the following year. This was a significant step in terms of providing a model for all to use the Athlete Passport project.

THE CHAIRMAN thought that it was a very significant step, and WADA should think about a launch, to try and attract some publicity. He could talk about that later with the management.

#### DECISION

Athlete Passport/blood parameters update  
noted.

#### 8.1.3 Scientific research programmes – Report on 2001-2008 research projects and outcomes

DR RABIN informed the members that a similar report had been brought to the members' attention two years previously, in order to start to look at the outcomes of this important WADA programme, which had started in 2001, and had therefore been under way for eight years. It was one of the very earliest programmes established by WADA, and the Health, Medical and Research Committee had identified some priority themes for the research activities right from the very beginning. It was quite important to indicate that these themes had evolved as science had moved forward. By way of an example, looking at the third bullet point on the screen, the theme of exogenous and endogenous anabolic steroids had been established very early on in the programme; since then, so many good results had been achieved that this theme had been moved into the more

general theme of projects related to the Prohibited List. It showed that science evolved as WADA progressed.

In eight years, WADA had received a total of 441 grant proposals, quite a high number coming from the five continents, and from 36 nationalities, representing 211 teams in total. It was important to realise that about three-quarters of these applications came from research teams outside the traditional anti-doping research teams, so it meant that there was good interest on the part of the research teams in the more academic or even private domains to help WADA and apply for research grants to promote anti-doping research and knowledge. Looking at where WADA stood today in terms of investment by WADA, the total investment in 2009 (subsequent to approval of the 2009 budget) would be close to 40 million dollars, so it was a significant investment by WADA, with roughly 25 million dollars already paid to the research teams. Looking at the commitment in terms of percentage of WADA's total budget, one quarter of the total budget had been reached, which was very significant if this was compared to other standards, such as the pharmaceutical industry, known to be a significant promoter of research, which was more in the order of 20%. So, WADA was a very active promoter of research. Looking at the 441 projects received by WADA, about 194 had been approved, giving a success rate of about 40%, which, according to international standards, was reasonably high. It meant that there was a reasonably good coverage of applications presented to WADA. In total, it was quite important to realise that, out of the 194 projects approved, only 70 had been completed. Most of the projects were three- and four-year projects and, currently, about one third of the projects had been completed. He would further report on the outcomes of these projects.

In terms of financial commitment, WADA was close to 40 million dollars. The lion's share went to Europe, with almost two-thirds going to European research teams, about 17% to Oceania, the same to the Americas, and only a small portion to Asia. Unfortunately, no projects had been received from Africa that had been approved by the Health, Medical and Research Committee. Again, WADA was working with every single region and used every opportunity to promote the research programme and encourage the teams from the different continents to submit their grants to WADA.

He also wanted to give the members an idea of where the money was going in terms of areas of the List. Looking at anabolic agents, roughly 25% of the money had gone into anabolic agents and, as he had been saying earlier, when WADA had taken on this research activity in 2001, a lot of the issues related to anabolic steroids, and to date, a lot had been achieved, as would be seen in the outcomes in a few minutes, and this theme was now disappearing or merging with other areas, showing that, when there was an interest, money was put into it and research teams worked very actively on some of the issues, WADA found solutions. That was particularly the case for anabolic steroids. Also, there had been a lot of investment in hormones, which was certainly a very active area in terms of therapeutic use of hormones and, more specifically, human growth hormone, which had taken up about 20% of resources to date, along with EPO and other hormones such as insulin. To continue, very briefly, there were some other areas of high interest. Blood doping, in particular autologous blood transfusion, when one's own blood was taken out and readministered into one's body, and gene doping had been areas of relatively active research, although some of the research had not come to fruition. Since October 2001, more than 25 million dollars had been spent on research, and 70 projects had been completed, and he wished to present the five categories to try to make the presentation simple. He apologised in advance, as science was a very technical area and some technical terms would no doubt come up; nevertheless, he would try to be as simple as possible.

He had sought to present the major outcomes; not everything could be included on the slides, as there was way too much going on, but the aim had been to provide a colour code as to what had been achieved, what was in late development phase, what was in progress and what had been inconclusive. Looking at new detection methods (hormones and human growth hormone in particular), for the first time an assay had

been accepted and implemented between 2004 and 2008. This was the first step. More would be coming with the markers approach the following year, and WADA was already working on new concepts to integrate to improve on the detection of human growth hormone. EPO had been a very active area of research; it had been very difficult, but some very significant outcomes had been achieved, and a lot of EPO cases had been reported, much more than in the previous years, which showed that the activities were coming to fruition. A lot would also come in the next two years for the reinforcement of EPO testing. With regard to insulin, for the first time, recombinant insulin was detectable, and WADA was working very actively on endogenous detection of insulin. Looking at anabolic steroids, a lot of attention had been paid to the detection of designer steroids following the BALCO affair, and some interesting leads were coming to a conclusion. WADA was still working on autologous blood transfusion; this was a key project and a key priority. The Athlete Passport, in particular the haematological module, was one of the key projects, and the haematological module was coming to a very interesting point of maturity. Several methods had come to support or enrich or develop the capability of the anti-doping laboratories to detect either new classes of substances or single substances. In 2005, a new designer steroid had been captured and identified and had been a consequence of the BALCO affair. WADA was also revisiting the detection of anabolic steroids, as it was currently possible to better detect substances, and there were now new metabolites to identify anabolic steroids, so this contributed to the capability of the anti-doping laboratories to better detect and report on anabolic steroids. There had also been a few interesting outcomes, and he highlighted HBOCs, which were synthetic blood. WADA had had the opportunity to develop three different methods to detect those substances. He believed that they were no longer an issue in sport. With regard to hormones, he also highlighted, for those who had followed the Tour de France, the fact that the new EPO generation (CERA), was now detectable, and this was a good example of the good cooperation between the industry and WADA, which had started four years previously and, when the substance had been made available earlier that year to the public, WADA had been able to quickly catch the first athletes who had used the substance, in particular four athletes during the Tour de France.

In terms of improvement of current methods, a lot was going on. He would not go into too many details, but it was important to highlight the first line. The laboratories sometimes needed certified reference materials. This was something that was very active, to the point that WADA was now being approached by other international organisations to use the samples to run proficiency testing on laboratories other than the WADA accredited laboratories. This was really showing the quality of the work that could be achieved under this research programme. WADA was also acting in other areas, such as 19-norandrosterone and beta-2 agonists. Sometimes science did not always deliver. That was the nature of the beast. An example of failure to deliver was ghrelin. At the time, there had been a very nice hypothesis to determine hGH; however, after several research teams had worked on this, it had been realised that this marker was not specific enough for the intake of hGH, in particular in the context of anti-doping in sport, so the work had been very interesting, although it had led to the conclusion that ghrelin was not a good marker. This kind of work was certainly helpful but did not necessarily result in doping tests.

Another area of interest was gene doping, and this was very much a work in progress. It was a complex area, and a lot was being done to address the issues at different levels and from different approaches. WADA was working with leading teams in the field, and he hoped that there would be some results over the coming two to three years. Of course, not all projects delivered, as he had said.

Just to illustrate the WADA process, when the team did not perform to the expected level or the outcomes were not as expected, WADA could terminate the projects. This had happened in the past; he would not go into detail, but this showed that WADA followed carefully every single report that it received and worked intensively with the different research teams to make sure that they followed up on their projects and came up with results based on the proposal made. If they did not, the project could be

terminated. WADA tried to review all the projects ongoing as objectively as possible. Not all projects delivered exactly what was expected and, out of the 70 projects completed to date, WADA had identified six that had been unsuccessful and three that had partially delivered, in that the key objectives had not necessarily been achieved but at least part of the research had been used by another team or project to continue along a new path of research applicable to anti-doping.

When the department had been established in 2002, a list had been drawn up of the key and urgent issues that WADA faced. In terms of new substances, there were thousands of new substances being developed by the pharmaceutical industry, and it had been determined that this was work that really needed to be improved. He was pleased to report that, a few years later, bearing in mind the colour code, the members could see in green what had been implemented. He had referred previously to HBOCs detection and homologous blood transfusion; some of the new erythropoietin detection methods had been implemented, along with endogenous insulin detection methods in some anti-doping laboratories; the longitudinal follow-up of variables was something that had matured tremendously, as reported earlier. Of course, there were some challenges that WADA still faced, including autologous blood transfusion; hGH was not yet completed; and gene doping was also an issue, but this was work in progress. Looking at the new substances, out of the five classes of substances identified, already three could be detected by anti-doping laboratories, which gave the members an idea of what could be achieved when resources were dedicated. In white, the releasing factors for hGH and cell doping were examples of the need to intensify the work currently being done.

He had tried to find an interesting parameter to reflect the outcome of research. From the outset, it had been thought that, if research was improving the capability of the anti-doping movement to detect doping, this should be seen. The graph on the screen was a multi-variable graph in that it did not take into account only research outcomes; it also took into account better athlete targeting and use of information. Looking at 2004, considering that, for the different classes of substances, the AAF reported at the time had been at the 100% level, over the years, one could see an increase in the reporting of AAFs, and he drew the members' attention to the purple line, which represented the anti-oestrogens. This was an area in which the capacity of the anti-doping laboratories had been improved to detect this class of substances and report via the PT programme for the proper identification of these drugs and better research into those drugs, and there had been a tremendous increase between 2004 and 2006, and a significant drop between 2006 and 2007, probably reflecting the fact that the athletes had realised that this class of drug was better detected and were starting to move away from it (at least, this was what he hoped).

It was also very important at WADA that this research programme was acknowledged, and this was part of the contract of each single research team, that the work had to be published in peer review journals, and WADA had identified 268 publications in international journals acknowledging WADA's support and 162 presentations made at congresses or symposia. Of course, WADA was not always aware, as the teams did not systematically report to WADA on this, but he believed that this gave the members a good idea of the impact that WADA was starting to have. Over the past two years, at the Cologne workshop (the annual workshop for the anti-doping laboratories), more than half of the presentations made at this important meeting of anti-doping laboratories had acknowledged WADA's financial support.

In conclusion, he believed that this was a truly international programme. The number of applications was increasing; WADA now received close to 80 applications every year, which was about as much as WADA could handle internally, as the Health, Medical and Research Committee committed almost a full day to reviewing the applications, notwithstanding the work conducted by the research panel and the WADA science team. The contribution was now at about 20% of WADA's budget, which was quite important in terms of the sustainability of the programme. There was a significant success rate of close to 40%, the consequence of which was a good coverage of the applications

received at WADA. He believed that the quality of results and achievements was also good and, again, looking at the number of publications, there were about two publications per project in international peer review journals, showing the impact and the fact that the projects were carefully chosen and provided new knowledge in the anti-doping field.

There were still some areas to be addressed: autologous blood transfusion and blood manipulation were still an issue, although part of this had been covered with the detection of homologous blood transfusion, but there was still the issue of autologous blood transfusion. The Athlete Passport would provide an answer to this, and he had discussed the previous day with Professor Ljungqvist the possibility of hosting an international symposium on blood manipulation and transfusion, as well as the haematological module of the Athlete Passport. The hormones of peptides and releasing factors were still an issue. This was a very active area of development in the pharmaceutical industry. To provide the members with an example, it was believed that only about 20% of the hormones and peptides in the body were known, which left a lot of room for better understanding and discovery of new factors. This would be a real challenge for WADA. There was a solid programme in place for gene doping. WADA was waiting for the results and the consolidation of the results to see whether some of the hypotheses would deliver and transfer into anti-doping tests. Personally, he was very concerned about cell doping, as this was one of the most challenging areas that WADA was facing, when an athlete could take his or her own stem cells, have them grown externally and readminister them. One could take a dermal cell, put it in test tubes, transfer it into a muscle cell, or a tendon cell, and then reinject it, and this was exactly the same DNA in the cells. Basically, it was almost impossible to detect. There were some hypotheses, and WADA had started to work on it, but it was extremely challenging. This was an area about which he hoped to discuss with the research teams working in the field. He was also mindful of the cost of anti-doping, and there had been several projects aimed at lowering the cost of some of the methodologies or better integrating some of the detection capabilities in the laboratories to make better use of the urine or blood volume, and make better use of the testing time. As the members were aware, the laboratories were under pressure to deliver results more quickly, and this was something that WADA was also taking into account.

Looking to the future, there were so many things that could be done better. He had mentioned the need to further develop targeted research, which meant not only receiving projects, but also the capability of WADA to go and visit and discuss with leading teams in certain fields. This had been possible on a case-by-case basis in the past, and he believed that it would be a good idea to extend it in the future. He believed that WADA needed to develop cooperation between the anti-doping authorities and the pharmaceutical and biotech companies, because a lot of the molecules of the future were being developed by those countries. Thus far, WADA had been able to ensure very successful cooperation on a case-by-case basis, but would like this to be extended on a more systematic scale in the future. He believed that it was important for WADA to maintain its efforts in research. WADA was addressing more issues than in the past and its list was growing shorter as it made progress. WADA had made significant achievements; there was still plenty to be done and he could assure the members that the WADA Science Department, with the guidance and support of the Health, Medical and Research Committee and the various scientific committees, was highly committed to addressing those issues and facing those challenges in the future.

THE CHAIRMAN thought that the Executive Committee would be reassured by the work being done by the Science Department, particularly in the context of the progress that was being made through the use of the research grants.

PROFESSOR LJUNGOVIST wished to make some concluding remarks. He was very pleased with the way in which it had been possible to distribute money for efficient research. He was very used to this, but he had not been used to the success rate, in that so much had come about in such a short period of time. WADA had started slowly in

2001, but there had not been full activity until around 2003 and 2004; so, over four to five years, WADA had achieved considerable success in the sense that projects had been concluded and earlier existing detection methods had been improved, and WADA had found new methods for new substances. The members should know that it took about ten years from the time a substance was identified until it was on the market as a medication, but WADA had been able to follow such substances up and have methods available for when some of the substances had come onto the market. The latest example of such substances was CERA, which showed the speed with which all of this was developing. A method for the detection of CERA had not been available for use at the Olympic Games in Beijing, but it was now. This meant that the IOC would further analyse the samples taken during the Olympic Games in Beijing in order to identify possible CERA use. That illustrated the speed with which this whole area was developing. Some might have been surprised by the predominance of European centres that had received research money, but they should bear in mind that there were other funds available internationally for this type of research, particularly in the USA. The relatively low figure for the Americas was definitely related to the fact that USADA had a research fund, and WADA was cooperating with USADA. In conclusion, whilst trying to be unbiased and objective, he was pretty impressed by the way in which this research programme had been successful, particularly in relation to what he had experienced in earlier years, when nothing of this kind had been available for anti-doping, which explained why there had been a huge gap to close.

MR DE KEPPEL congratulated Dr Rabin on his outstanding report. He wanted to ask a question about the level of information that WADA sought to give the public about the research projects. Did WADA really want to inform the public and the media that, the following year, WADA would have autologous blood testing? What was the approach there?

THE CHAIRMAN said that, in his view, the less the public knew, the less the athletes knew, the less the cheats knew and the less they would try and cheat. In relation to the comment that Dr Rabin had made regarding gene doping and cell changes, he would prefer to have those athletes even contemplating cheating believe that WADA was absolutely perfect and had all the answers.

THE DIRECTOR GENERAL said that he had been looking at an appropriate release in relation to projects that had been completed, so as to inform the public as to the success of the research projects. As to the wish list that Dr Rabin had referred to, he thought that it would be better to keep this to a low level.

THE CHAIRMAN said that it might be wise to have a look at what would be said the following day, as the Foundation Board meeting would be public.

PROFESSOR LJUNGQVIST said that this was a philosophical and political matter that had been discussed for quite some time. Information to the athletes and their entourage was contained in the List. Whether or not WADA was able to identify a substance on the List was another matter, and WADA was very much helped by the statute of limitation of eight years, meaning that, if an athlete were to perform autologous blood transfusion today, such athlete could be detected in the future and identified as a cheat.

THE CHAIRMAN thanked Dr Rabin; his report had been very reassuring.

MR REEDIE said that he had been subjected on three occasions that year to the excellence of the science department, and it was always very difficult to let a simple moneyman get involved with scientists. Where Dr Rabin had referred to unsuccessful projects, he wished to be clear. Out of 70 projects, it seemed to him that 12% had failed and then 88% had not failed. Did that mean that the 88% had been a success, or did it simply mean that they had failed and, if so, on what standard? And if they had been successful, then 88% was an enormously high percentage of success. On a later slide, Dr Rabin had mentioned a success rate of 40%. He wanted to know how well WADA had done in terms of value for the very substantial amounts of money. He was delighted that

WADA got lots of publications and good work and spotted the right projects, but did WADA get value for money?

DR RABIN responded that the 40% represented the success rate for an application, meaning that, when a research team applied to WADA, it had a 40% chance of having its grant approved by WADA. The 80% applied to the rating of the success of the outcomes of the research project, meaning that the committee looked at the objective or objectives of the research team upon application and then determined whether all of the objectives had been achieved upon completion of the project and implemented in anti-doping laboratories, so that was one of the elements taken into account. The Health, Medical and Research Committee tried to minimise the funding. It had been said from the start that WADA did not have the resources to sponsor academic research in the sense that it wanted deliverables at the end of the research projects, and could only fund and support applied research proposals, so the Health, Medical and Research Committee was very careful and rejected projects that were considered to be too basic, which in part explained why there was a very high success rate in terms of research outcomes.

MR REEDIE said that that was fine. If WADA was restrictive in the applications it approved on advice from experts, and if the people were asked specific questions, and if, at the end of three years, 88% of them had answered the questions, that was a formidable success rate, and he did not see any reason why that kind of statistical evidence should not be part of the abbreviated report the following day, so that, if somebody asked Dr Rabin for another reason why WADA existed, there it would be, staring that person in the face. 25% or 30% of WADA's money was invested in what would appear to be a very successful operation. He congratulated Dr Rabin.

#### DECISION

Scientific research update noted.

## **8.2 Education**

### **8.2.1 Education Committee chair report**

MR LUNN said that he looked forward to working with everybody at future meetings; he was still learning, but was thrilled to have the position on behalf of the Government of Canada, and he looked forward to working with the members of the Executive Committee. As the new Chair of the Education Committee, he was very pleased to take on this responsibility and present his first report to members. Before reporting on the outcomes of the Education Committee meeting, which had been held in Montreal on 2 and 3 October 2008, he wanted to stress the importance of anti-doping education. As everybody knew, significant financial resources were allocated, at the international level, to the fight against doping in sport. Over the years, significant focus had been placed on detecting the use of doping substances, through testing and research and, more recently, through cooperation with investigation authorities. These efforts were very important elements in the fight against doping in sport. However, moving forward in the fight against doping in sport, increased focus needed to be placed on education. Education of athletes and their support personnel in general, but also of young athletes in particular, was important to prevent doping in sport and to empower them to make the right decisions. He was pleased that WADA and its President were strong advocates for education and believed that this would lead other organisations to increase their focus on education.

With respect to recent activities, he was pleased to report that WADA had recently launched a new programme dedicated to youth. This new programme, entitled "The Play True Generation" had been launched at the 3<sup>rd</sup> Commonwealth Youth Games held in October 2008 in Pune, India. It was intended to provide a fun, interactive experience and to empower a generation of athletes to promote the ideals of fair play and the spirit of sport values. Mr Koehler would have the opportunity to tell the members more about this new programme in a few minutes.

During its very productive two-day meeting in October, the Education Committee had had the opportunity to discuss various topics. He wished to provide a brief update on some of the key areas discussed.

The Committee had reviewed 21 grant applications. When evaluating and selecting projects for recommendation, members had to consider that, due to a limited envelope of 200,000 dollars for the Social Science Research Grant Programme, the committee could recommend only three projects for funding.

Members had agreed that the funding currently available primarily provided support to fund domestic research instead of much needed global research. They had agreed that additional funding should be made available to support a more global approach to this programme.

To address these two issues, committee members had decided to develop a five-year strategic plan, reflecting a way forward and supporting increased funding for the programme. Also to be reflected in this strategic plan, the following year's Social Science Research Programme would seek to implement both open and targeted research. The committee believed that this approach would better serve WADA in helping to develop specific programmes.

The committee was very pleased with the tools created by WADA to assist countries in developing preventive education programmes. WADA's Education Department continued to monitor and evaluate its activities and the use of its materials. Although this process had been mostly quantitative, it was seeking to become more qualitative by monitoring and evaluating changes in attitudes and behaviours.

Moving forward in further developing programmes in 2009, members had supported the Education Department's goal of creating interactive online resources to further expand its global reach while at the same time having resources available to cater to those countries that did not have easy access to web-based programmes.

As a result of a very successful pilot programme of the Play True Generation during the Commonwealth Youth Games, members were very excited about the rollout plan for this programme. Lessons learned from the pilot would be used to further advance the programme in preparation for the 2010 Youth Olympic Games in Singapore, thus better serving the programme but, more importantly, engaging young athletes.

The committee had also endorsed the department's initiative of partnering with Chooseco, creators of the "Choose Your Own Adventure" book series. These books, which would have an anti-doping theme, engaged the reader in making choices about where the story should go and how it should end. The Education Department would be working with the UNESCO Associated School Programme Network to develop curricula and ensure distribution of the materials.

The committee had been pleased by the expansion of WADA partnerships. Such partnerships would continue to promote a global approach to education initiatives. The committee had also recommended that the department begin a series of pilot projects working with various ministries of education throughout the world to integrate anti-doping education messages into the mainstream curriculum. The intention of such pilot projects was to develop a model to assist other governments integrate such material.

In conclusion, approaching 2009 and the first year of mandatory education programmes for all Code signatories, it was necessary to explore how WADA could best support global efforts to educate athletes and their support personnel about the risks and harmful effects of doping and further reach out to young athletes.

He invited Mr Koehler, Director of WADA's Education Department, to expand on some of the most recent activities of the Education Department. He would invite comments and questions after his presentation. He wished to take a moment to thank Mr Koehler for the support given to him in his new role.

MR KOEHLER said that he wanted to provide a brief introduction to the Play True Generation programme launched in India at the Commonwealth Youth Games. He wanted to show the success of the programme through a video made in cooperation with the Communication Department.

A lot of positive feedback had received in relation to the programme, and he would provide the survey results the following day. In general, he had learned a lot of valuable lessons from the programme, and had shared those with WADA's partners, including the IOC, for the development of the Youth Olympic Games in 2010. He looked forward to further improving the programme.

THE CHAIRMAN thanked Messrs Lunn and Koehler for their reports, and welcomed Mr Lunn to WADA.

#### DECISION

Education Committee chair report noted.

### **8.2.2 Social science research**

#### **8.2.2.1 2009 projects**

MR LUNN said that the committee had been very pleased to see an increasing number of projects submitted for 2009. It had received 21 applications from 13 countries, and had evaluated the projects selected through a peer review process. He felt that the recommended projects reflected the programme priorities for 2009, considering the limited financial resources available for the programme. Three projects had been selected, one from France (the committee was sharing the financing of the project with the Science Department, as there was common ground and the project went beyond education), another from Denmark, and a third from the USA. Of the 21 applications received, and considering the amount of money available, it had been possible to select three very interesting projects.

THE CHAIRMAN asked if the Executive Committee supported the recommendations.

#### DECISION

2009 Social Science Research Programme projects approved.

#### **8.2.2.2 Research programmes – report on 2001-2008 research projects and outcomes**

MR KOEHLER presented his report. He briefly went through what had been done to date and how far WADA had come, but wished to start by talking about the objectives set for the Social Science Research Programme. One of the objectives was to encourage social science research in the field of anti-doping, and the second was to provide evidence-based information to develop WADA's education programme. In line with those two objectives, there were three main research priorities: increasing the knowledge of doping behaviour, the risk factors and the protective factors; the evaluation of anti-doping interventions; and improving social science research in doping prevention. The focus was very much on prevention. To date, 110 applications had been received since 2005. WADA had been able to fund 21 projects, accounting for 536,000 dollars. In terms of the spread between the Americas, Africa, Asia, Oceania and Europe, the majority had been in Europe, and the plan was to reach broader audiences over the next few years by promoting the programme. In brief, looking at the objectives and priorities, all of the programmes completed to date had reached some or all of the objectives, which he thought served the programme well and could serve the programme in the future.

To date, four categories had been completed. One was a literature review, two were on policy-making, two were on attitudes, beliefs and knowledge, and two were on the

methodology of social science research. He showed the members what these had brought to WADA. The conclusion of the first project was that there was not nearly enough research in the field of social science research. Based on this, more applications had come in to promote this area. In policy-making, there had been two projects, one talking about the strong need for political support in the implementation of anti-doping programmes. This showed that it was hard for an anti-doping organisation to go it alone (i.e., it needed political support), and WADA had used this as a basis for its seminars, bringing together governments and sporting organisations to implement anti-doping programmes and education programmes. Another study had been undertaken in Korea, relating to the fact that policy-makers should receive anti-doping training. While this had not been used directly for the Education Department, it was something that was done all the time at WADA in terms of developing capacity with all of the stakeholders. Looking at attitudes, beliefs and knowledge, one project had seen that athletes with perfectionist tendencies were more likely to dope. That study had been carried out across a variety of athletes, and was used to help with the WADA Coaches' Tool Kit, as the aim was to help coaches identify athletes at risk of doping, so as to prevent doping. Another interesting project had studied the correlation between friends and peers and the influence that each had on the use of prohibited substances. The research had concluded that the influence on cliques was more important (cliques meaning a very close-knit group of athletes or people or friends, and not just general friends). This had been used on the methodology for the survey carried out at the Commonwealth Youth Games in Pune, in India. He would provide some of the survey results the following day.

Looking at methodology, one of the things that he had wanted to develop further in the Coaches' Tool Kit was the motivational climate for doping and what motivated athletes in terms of making the decision to dope. This research really explained what made athletes make those decisions, and had helped redefine work to train coaches on anti-doping prevention. Another project had looked at over-the-counter medication and the therapeutic use of drugs by athletes. This study had really shown that what WADA needed to do was make sure that athletes were aware of the changes in the Prohibited List. The conclusion had been that education and information were complementary.

There were four categories of projects that were currently in progress: three on doping behaviour, three on doping behaviour in specific sports, four on particular profiles of athletes potentially using prohibited substances, and four projects working on development tools to assess and address the ability to prevent the use of doping. He did not wish to go into each of these in detail, as they were in the report. He would be happy to answer any questions.

THE CHAIRMAN indicated that Mr Koehler had sought additional funding in the budget; however, the committee process had prevented that from occurring. Nevertheless, Mr Koehler certainly had his encouragement in that area. This type of material ultimately underpinned WADA's capacity to influence young people in the broader community and therefore the value coming from the social science research programme could not be underestimated. In the revised Code, an education programme was mandatory. This got down to some of the facts that governed behavioural patterns. Mr Koehler certainly had his encouragement to continue this work and disseminate it for the value of those who sought to incorporate it in broader education programmers (the public authority members).

#### DECISION

Report on research projects and outcomes noted.

### **9. Other business/future meetings**

THE CHAIRMAN noted the indicative dates for the meetings the following year. In December, the proposal was that WADA should perhaps not meet in Canada. The background was that it happened to be the tenth anniversary of the establishment of

WADA. This was a significant milestone and an opportunity for WADA to account for its success, progress and, to some extent, the plans for the future. WADA had started in Lausanne and there was a feeling that there would probably be a greater splash, greater publicity and greater awareness of who and what WADA was if the meeting were to be held in Europe, also respecting the fact that WADA had been spawned in Europe in the first instance. He had discussed the issue with Professor Ljungqvist, who had pointed out that Sweden would be holding the European presidency in the second half of 2009, and he asked Professor Ljungqvist to comment on why WADA might consider meeting on that occasion in Stockholm.

PROFESSOR LJUNGOVIST thanked the President for giving him the opportunity to talk about this possibility. Certainly Stockholm would welcome an opportunity like this to host an important anniversary and celebration. Sweden had been a strong supporter of WADA, a pioneer in the field of anti-doping and the first country to sign the UNESCO convention, and was strongly committed to anti-doping. He had had a short conversation with the representatives of the Swedish Government, which would like to discuss the matter in Biarritz in a few weeks' time. It would be a great pleasure for him, Sweden and Stockholm to host this important celebration.

THE CHAIRMAN said that, on that basis, he would certainly have that conversation in Biarritz the following week. The events themselves were still very much in the infant stages, so he would not talk very much about the event programmes surrounding the Executive Committee and Foundation Board meeting. Other than that, was there anything in that list of dates that anybody wished to raise?

MR STOFILÉ noted that it was a matter of global importance that South Africa had beaten England 42 to 6.

THE CHAIRMAN said that he thought that this had been said specifically for Mr Reddie's benefit, but added that there would be no tears shed by the Australians!

Before closing the meeting, he wished to thank the members and staff, and acknowledged the interpreters and the minute-taker. Their contribution to the functioning of the meeting was greatly appreciated.

#### DECISION

Executive Committee – 9 May 2009, Montreal;  
Foundation Board – 10 May 2009, Montreal;  
Executive Committee – 19 and 20 September  
2009, Montreal;  
Executive Committee – 1 December 2009,  
Europe;  
Foundation Board – 2 December 2009, Europe;  
Executive Committee – 8 May 2010, Montreal;  
Foundation Board – 9 May 2010, Montreal;  
Executive Committee – 18 and 19 September  
2010;  
Executive Committee – 20 November 2010,  
Montreal;  
Foundation Board – 21 November 2010,  
Montreal.

The meeting adjourned at 3.45 p.m.

**FOR APPROVAL**

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