

## ANNEX

### **Contribution of the Article 29 Working Party to the 3rd stage of WADA's consultation in the context of the review of the World Anti-Doping Code and its International Standards**

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✓ *World Anti-Doping Code*

#### **Articles 10.10 and 14.3 - Automatic Publication of Sanctions**

1. The Art. 29 WP considers that the automatic publication of sanctions on the Internet is not necessary for the purposes put forward by WADA, namely the purpose of preventing athletes that have been sanctioned for an anti-doping rule violation from taking on another role in sports or participating in another sport, and the purpose of deterrence. Both these purposes can be obtained in a way that is less damaging for the privacy of the persons concerned, as the Art. 29 WP has outlined in its previous opinions.
2. The WADA Code should provide for a rule that truly reflects the “need-to-know-approach” that WADA has announced to respect in the revised Code.
3. The Art. 29 WP therefore suggests that public reporting should not be automatic and mandatory, but should depend on the facts and circumstances of the case. The Art. 29 WP welcomes the suggested Article 14.3.6, according to which public reporting is not mandatory in cases where an anti-doping violation has been committed by a minor and has, in this case, to be *proportionate* to the facts and circumstances of the case. In the Art. 29 WP’s view, the provision should not be limited to minors, but should apply to all athletes or other persons.
4. Elements that could be considered in order to determine whether the publication of a sanction is proportionate are, for example, the severity of the anti-doping rule violation, the number of violations, the level at which the athlete competes, whether the athlete is a minor or an adult (see above), whether the case has already received media attention, and whether the sanction has consequences for the results of competitions and ranking of athletes. In case a publication of sanctions is deemed necessary, other less intrusive means of publication should be considered: A onetime publication immediately following the judgment, for example by a press release, could be sufficient. The damaging effect of publications of sanctions on the athletes’ privacy could thus be restricted to a limited number of high-level cases. The duration of the publication of the sanction could also be limited: for example, by posting it on the Internet only during a certain period followed by a less “accessible to all” further publication (for example only for information of anti-doping organisations and sport Federations) in second phase. An annex like the one existing for retention periods of data could be a useful tool to develop.

5. Finally, the Art. 29 WP asks WADA to ensure that only final decisions are published. WADA has confirmed that this is already the case. Yet, the last sentence of Article 14.3.2 seems to suggest that decisions that have been published by an Anti-Doping Organization can still be appealed. If this understanding is correct, the decision to be published would not be the final one. Article 14.3.2 therefore needs to be clarified.

### **Article 22 - Involvement of Governments**

6. The Art. 29 WP would like Article 22 to be amended as to reflect the fact that the Code does not create any legal obligations for governments. In particular the language in Article 22.2 (“will put in place a proper legal basis”) is in contradiction to the introduction of Article 22 and to the clarifications provided in the comment to Article 22. Any cooperation and sharing of information will have to be in accordance with national data protection laws.

✓ *International Standard for the Protection of Privacy and Personal Information*

### **Article 4.0. Processing Personal Information in Accordance with International Standard and applicable law**

7. Reference to the applicable national law is essential. However, in the Art. 29 WP’s view, article 4 on applicable law does not seem completely satisfactory, since article 4.1 mentions the following: *“This international Standard sets forth a minimum set of requirements applicable to the processing of personal information by Anti-doping Organizations and their Party Agents in the context of Anti-Doping Activities. All Anti-Doping Organizations must comply with this Standard, even when its requirements exceed those arising under the Anti-Doping organization’s applicable data protection and/or privacy laws (...)”*.
8. It appears that if the Standard requires more than European Directive 95/46/EC (see for example art. 9.1, which imposes the designation of a person equivalent to a "Data Protection Officer"), it will be difficult to enforce, considering that the World Anti-Doping Code and *a fortiori* the International Standards completing it are not perfectly legally binding. Moreover, it does not always seem easy to determine whether or not the requirements of the Standard on the Protection of Privacy and Personal Information exceed those of applicable national law (see 4.2). WADA explained the logic behind these paragraphs, i.e. the aim to let the Standard – be it as a political-moral commitment – take precedence, particularly where privacy and data protection law does not exist or offer a relatively low level of protection. As mentioned in its earlier opinions, the Art. 29 WP is strongly in favour of the decision to promote the protection of privacy and personal data in the context of anti-doping activities which transpires in the Standard. Nevertheless, the Art. 29 WP wonders whether it will be possible to apply article 4.1 from a strictly legal point of view.

## **Article 5.0. Processing Relevant and Proportionate Personal Information**

9. Regarding 5.1. the Art. 29 WP wonders why the terms “necessary and appropriate” are distinguished. Under 5.2. “Irrelevant” is used. Terminology needs to be clarified and used consistently.
10. Regarding 5.4. the Art. 29 WP believes that rectification of data has to be the rule and the absence of rectification the exception (“where possible”). This is true especially when anti-doping organisations have to meet to this obligation in their capacity of controllers (Directive 95/46/EC does not provide for exceptions in this context). If athletes are responsible, the Art. 29 WP welcomes the fact that ADOs make adequate tools available to athletes in order to exercise this right.

## **Article 6.0. Processing Personal Information in Accordance with Law or with Consent**

11. The Art. 29 WP's rejection of consent as a legitimate basis to process data – including data concerning health (see also below point 14) – in the context of the fight against doping is well known. Here, the Art. 29 WP would like to refer to the observations supporting this rejection in its earlier opinions of 2008 (WP156) and that of 2009 (WP162).

*In particular, the Art. 29 WP would like to recall that“(…) such consent does not comply with the requirements of article 2(h) of Directive 95/46/EC, which defines consent as « any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed ». The sanctions and consequences attached to a possible refusal by participants to subject themselves to the obligations of the Code (for example providing whereabouts filings) prevent the Working Party from considering that the consent would be, in any way, given freely.*

*In addition, Directive 95/46/EC forbids the processing of sensitive data, such as data concerning health, and data revealing racial and ethnic origin, unless a valid ground can be found in article 8 of the Directive. Article 6.2. of the Privacy Standard suggests processing of sensitive data could take place on the basis of consent. In principle, article 8.2.a) of the Directive provides that consent is a ground for processing. However, the remarks made on consent above also apply in this context.*

*Furthermore, the Working Party recalls that the Directive does not allow for the processing of data relating to infringements on the basis of the consent of the data subject (article 8, § 5 of Directive 95/46/EC)” (WP 162)*

12. The Art. 29 WP understands WADA's explanation on countries in which the absence of legislation leaves no other alternative than to resort to consent. It is not insensitive to this argument, but its mandate and competence are to safeguard at least a data protection level equivalent to that of currently applicable European rules, which

largely *dismiss consent* as a valid legal ground for data processing operations in the fight against doping, as mentioned above. The spirit of the European Commission's proposal for a regulation of 25 January 2012 undeniably reinforces the required characteristics of consent, which supports and strengthens the Art. 29 WP's view.

13. Art. 6.2 allows the possible processing of sensitive data, such as those defined in art. 3.2. of the International Standard. Article 3.2 of the Standard defines sensitive personal information including genetic information. According to the clarifications provided by WADA to the ad hoc Art. 29 subgroup, genetic characteristics are not currently processed by WADA and by other Anti-Doping Organizations. Moreover, none of the provisions of the revised Code and of the related Standards (not even the rules regarding Testing, Samples, Test results and Athlete Biological Passport) involves the processing of these categories of information. The Art. 29 WP questions the legitimacy and the need for the processing of such data and asks WADA to delete genetic information from the definition of art. 3.2. If the processing of such data is envisaged a particularly level of protection should be provided.

#### **Article 7.0. Ensuring Appropriate Information is Furnished to Participants and other Persons**

14. Paragraph 1 of art. 7 lists the elements that should be provided to participants or to persons to whom the personal information relates about the processing of their personal information. The Art. 29 WP suggests that in cases of collection of personal data from the data subject (i.e. detailed information on the athletes' whereabouts) these elements should include whether the information required is to be provided on an optional or mandatory basis and what consequences arise from the failure to provide such information (see article 10(c) of Directive 95/46/EC).
15. As regard to Article 7.2., the Art. 29 WP has taken note of the following: *“exceptionally, notice to the Participant or other persons may be delayed or suspended where providing such notice might reasonably be considered to jeopardize an anti-doping investigation. In such cases, the justification for the delay must be appropriately documented and the information provided to the Participant or other persons as soon as reasonably possible taking into account the status of the investigation”*. It does not object to delaying or suspending notice to participants in the circumstances described, but it is more concerned about how this article is explained.
16. Paragraph 1 of the comment stipulates that participants should have "reasonable access" to information. The second paragraph of the comment refers to the only reservation made in the text of article 7, i.e. delaying or suspending notice where this can jeopardize an on-going investigation. Consequently, it may be inferred from §1 that in other cases, notice would not have to be given. The Art. 29 WP cannot

subscribe to such vague terminology as "reasonable access", because this is one of the data subject's fundamental rights. This would have to be adapted or at least clarified if the authors' only wish is indeed to refer to the exception of the last paragraph of 7.2.

### **Article 8. Disclosures of Personal Information to other Anti-Doping Organizations and Third Parties**

17. This is not a new article. Having heard the WADA representatives' explanation, the Art. 29 WP would like to make the following comments.

18. Article 8.3.a) authorises the disclosure of data by ADO's to third parties if required by law. In reply to the subgroup's questions WADA mentions legislations with an extraterritorial effect, if any. The Art. 29 WP would like to recall its jurisprudence stating that legislation must be EU legislation, or national legislation of a Member State. It is out of the question that non-EU requests for disclosure of data are complied with, unless this is prescribed by the national legislation of the country of the ADO receiving the request.

19. Article 8.3. c) does not specify whether the "criminal offence" must be qualified as doping or at least be doping-related, or whether it is any "criminal offence". The Art. 29 WP is of the opinion that it cannot be "any offence", and that the offence has to be closely linked to doping. This limitation should be added to the text.

### **Article 9.0. Maintaining the Security of Personal Information**

20. Even though this is not a new provision, the Art. 29 WP is satisfied with the designation of a "*person who is accountable for compliance with this International Standard and all locally applicable privacy and data protection laws*" (9.1.). It holds that the designation of a Data Protection Officer (DPO) is recommended for ADO's. The European Commission's proposal for a regulation of early 2012 also advocates this (articles 35 and following, and more particularly, in the Art. 29 WP's view, articles 35a) and 35 c) would be applicable in this case). However, it regrets that the communication of the DPO's name and contact information is not mandatory and subject to a request from the data subject ("*They [Anti-Doping Organizations] shall take reasonable measures to ensure that the name and contact information of the person so designated is made readily available to Participants should they request it*"). The communication of the DPO's identity should have to be ensured (for example on the organisation's website or on any other document provided to data subjects by the organisation). If not, how could data subjects ask for the DPOs' identity, if they are unaware of their existence?

21. The Working Party welcomes the inclusion of a provision on the notification of security breaches (9.6.). The Working Party understands that this provision also applies to the activity of WADA and ADAMS, taking into account that it applies to all Anti-Doping Organizations and that WADA is defined as such in article 3.1. (selected

terms of the Code: definition of “Anti-Doping Organisation”) However, for the sake of clarity and legal certainty, including a specific reference to WADA and ADAMS in article 9.6 should be considered (see below the specific section dedicated to ADAMS).

22. Although the Art. 29 WP understands that not setting a fixed deadline for the notification of security breaches to the affected data subjects allows for more flexibility in the application of the Standard, it would like to point out that the use of a less precise alternative, such as the expression “as soon as reasonably possible” may undermine the effectiveness of the provision, particularly when it has to be applied in varied legal and cultural contexts.
23. At the same time, and if the Standard is to be considered as a minimum that may be replaced by national applicable laws if these contain stricter rules, there seems to be no reason that prevents from establishing a clearly defined deadline. That would contribute to ensure a higher degree of protection for individuals.
24. In the same line, consideration should also be given to making a more precise description of the exact circumstances which will trigger the obligation to notify. According to the present draft it is difficult to determine whether notification has to be made only when the responsible organization has full knowledge of the existence of the breach or, on the contrary, whether the mere existence of indications that an incident has occurred that might affect personal information is reason enough to notify.
25. Moreover, the Art. 29 WP regrets that no reference is made to a supervisory authority, if any but is well aware of the fact that in many countries, there will be no DPA to deal with security breach notifications. Consequently, the Art. 29 WP would at least ask for security breaches to be notified to the organisation's DPO. Spontaneous communication of the DPO's identity is even more self-evident in this case (see above).

#### **Article 10. Retaining Personal Information Only as Necessary and Ensuring Its Destruction**

26. Since the adoption of its opinions of 2008 and 2009, the Art. 29 WP has examined the Annex to the Standard on retention times. This annex, elaborated in consultation with the competent authorities of the Council of Europe, specifies the retention times (to be) respected for each category of data (whereabouts, Therapeutic Use Exemptions (TUE), Testing, Samples, Test results, Disciplinary Rulings and Athlete Biological Passport). To the Art. 29 WP's satisfaction, this was one of its wishes, which has been taken into account. Such an annex also has the merit of being legible and transparent towards data subjects. The table should, however, be presented more clearly as an integrated part of the "Privacy Standard" (i.e. as a unique document on the WADA website). Still, the Art. 29 WP would like to observe that only categories of data have

been taken into account and not the individuals these data relate to, even though they will mostly concern athletes. At any rate, regardless of how WADA responds to the preceding observations, the annex and the provisions of the relevant texts should correspond perfectly. For a detailed analysis of each retention period, see below the comments made on the Annex.

27. As to article 10.2., the Art. 29 WP has a question about the terms "necessary or appropriate". What is the difference between these concepts? At any rate, necessity should always be the criterion. In the current wording, it does not appear excluded that data retention is considered as appropriate, even when it is not necessary. The Art. 29 WP firmly opposes this.

28. Regarding article 10.4., the Art. 29 WP regrets that the earlier wording ("shall") has become less strict ("may"). It is of the opinion that the proportionality of retention times depends on the purposes of the data processing. Which other criteria could apply? The Art. 29 WP prefers the previous wording.

### **Article 11.0. Rights of Participants and Other Persons with Respect to Personal Information**

29. In the comment to article 11.1, the Art. 29 WP would like to see "exceptional efforts" replaced by "disproportionate efforts", i.e. a terminology used more frequently in the field of data protection and therefore, in light of past experiences, more workable.

✓ *Annex to the International Standard on Protection of Privacy and Personal Information (ISPPPI) – Retention Times*

30. As already mentioned (point 24), the Art. 29 WP generally welcomes that WADA has developed guidelines setting forth specific retention times for different types of personal information processed in the anti-doping context. In order to enhance transparency, the Art. 29 WP recommends including into Article 10.4 of the ISPPPI a reference to the annex setting forth these retention times and publishing it as part of the package containing the Code and the different Standards. It also advises WADA to ensure that the ADOs are obliged to adhere to these retention times.

31. Moreover, the Art. 29 WP questions the relevance and necessity of the retention periods set out in the annex.

#### a) General Athlete Information

(Name, date of birth, sports discipline, gender: Indefinitely/ Phone number, email and home address: 8 years as of time when athlete is excluded from ADO's testing pool)

32. WADA has not indicated why ADOs would need to indefinitely keep record of athletes that have been part of their testing pool. In the Art. 29 WP's view, it is not necessary for the ADO to indefinitely keep the athlete's name, date of birth, sport discipline and gender. Personal data should not be retained for longer than necessary to fulfil the purpose for which they have been collected, even if the data are not particularly sensitive.

b) Whereabouts

(18 months as of date to which the data relate)

33. The Art. 29 WP does not consider that there is a valid reason to retain this information after the date relating to particular whereabouts information has passed. As a matter of fact, article 5.6 of the Code itself provides that whereabouts information '*shall be used exclusively for purposes of planning, coordinating or conducting Testing; and shall be destroyed after it is no longer relevant for these purposes*'. Whereabouts information should only be retained after the date the information relates to has passed if the anti-doping organization considers there is an alleged whereabouts failure. As three alleged whereabouts failures in 18 months amount to an alleged anti-doping rule violation, retention of 18 months is justified in such cases. However, if there has not been any whereabouts failure, the whereabouts information should be deleted. The Art. 29 WP therefore asks WADA to put in place more differentiated retention times for whereabouts information (see previous opinions).

34. If the whereabouts information is also used for a systematic statistical analysis with a view to identifying high risk athletes to be targeted for controls, this purpose is different from the purpose mentioned in Article 5.6 of the Code. However, the purpose of any processing of personal data should be explicit and specific (art. 6 I b) of Directive 95/46/EC). Therefore, WADA should at the very least explicitly state this purpose in Article 5.6 of the Code. Moreover, the Art. 29 WP would like to recall that any form of proactive surveillance in order to detect potential violations goes against the principle of proportionality.

c) Therapeutic Use Exemptions (TUE)

(Approval form: 8 years as of approval date, supporting medical information: 18 months from end of TUE validity)

35. The Art. 29 WP does not consider it necessary to retain the medical information supporting the TUE for a period of 18 months after the expiration of the TUE. If this information remains relevant after expiration of the TUE just in case of a re-application, and in light of the sensitive nature of the information, the Working Party recommends deleting the data as soon as a re-application can be excluded. Also the review by WADA should take place as soon as possible. The differentiation of retention times should generally not rely on two categories, 18 months and 8 years, but

should take account of the principles of necessity and proportionality for each category of data.

d) Testing

(18 months as of document creation date or 8 years as of first violation indication, depending on whether there is an indication of an anti-doping rule violation or not)

36. The provision foresees a retention time of 8 years for testing information such as mission orders, doping control forms and the chain of custody if there is any indication of an anti-doping rule violation, if the sample is stored for possible re-testing or if it is part of a passport program. The Art. 29 WP does not see why data retention for a period of 18 months is necessary if these instances do not apply. The Art. 29 WP therefore recommends a further reduction of retention times for these cases, strictly applying the principle of necessity.

e) Samples

(Indefinitely or 8 years)

37. The provision should clearly indicate that samples can only be retained indefinitely for scientific purposes if they are anonymized and that solely in cases of anti-doping rule violations, identifiable samples can be retained for a maximum period of 8 years.

f) Test results/ Results management (forms/documentation)

(8 years as of creation of relevant documents)

38. The retention of negative test results for a period of 8 years is not necessary; the retention period should be substantially reduced. If keeping the negative results for a longer period of time is in the interest of the athletes – as WADA argues – the data should be retained only on the athlete's request.

g) Disciplinary Rulings

(Indefinitely)

39. There does not seem a justification for retaining indefinitely the data relating to disciplinary rulings if the disciplinary proceeding results in an acquittal for the athlete. The Art. 29 WP asks WADA to provide for a further differentiation of retention times in relation to disciplinary rulings.

h) Athlete Biological Passport

(Results: 8 years as of date results were obtained, whereabouts 8 years as of date the data relates to)

40. The Art. 29 WP acknowledges that the system of the Athlete Biological Passport requires a long retention period of 8 years for the results information. However, the Art. 29 WP questions the necessity of retaining the whereabouts of athletes who take part in a Biological Passport program for 8 years. It recommends limiting the retention times for these data according to the principle of necessity.

41. In addition to this remark, the Article 29 WP would like the texts to mention clearly that the use of the Athlete Biological Passport is not mandatory – as confirmed by WADA during the subgroup meeting.

✓ *The use of the ADAMS database*

42. The description of the ADAMS database has not been modified in the revised version of the Code, except by the addition of a sentence that specifies that that it will serve the purpose of making WADA a clearinghouse not only for Doping Control Testing but also for Results Management Decisions.

43. Therefore, most of the concerns expressed by the Art. 29 WP in Opinion 4/2009 still apply.

44. The Working Party welcomes the fact that in a number of sections the Code seems to introduce more flexibility in the use of ADAMS by providing that the exchange of information among Anti Doping Organizations may be carried out using ADAMS “*or other system approved by WADA*”. That is the case, for instance, of article 5.4, on the coordination of out of and in competition testing, article 5.6, on Athletes Whereabouts Information, or article 14.5, which describes the role of WADA as Doping Control Information Clearinghouse. Other provisions in the foreseen revised versions of the International Standard for Testing and the International Standard for the Protection of Privacy and Personal Information also reflect this change.

45. However, some doubts as to the extent to which the use of ADAMS might become mandatory in practice still remain.

46. On the one hand, other articles of the Code seem to favour the use of ADAMS. This is the case with article 7.6, where Anti-Doping Organizations are instructed to contact ADAMS (or other Anti-Doping Organizations) in order to determine whether any prior anti-doping rule violation exists. The International Standard for Therapeutic Use Exemptions, for its part, still provides that International Federations and National Anti-Doping Organizations shall report the granting of any therapeutic use exemption to WADA through ADAMS.

47. On the other hand, neither the Code nor any other document issued by WADA give at this point in time any indication as to the identity of those alternative systems or as to

the conditions or requisites that such systems might meet in order to be approved by WADA.

48. The Code repeats the provisions of the version of 2009 with regard to the supervision of WADA by the Canadian privacy authorities, but does not further specify what Canadian authority is responsible for this supervision. The information received both at the time of drafting Opinion 4/2009 and afterwards seems to indicate that WADA might be under supervision of the “Commission d'accès à l'information” of Quebec. As there is not yet a Commission Decision on the adequacy of the level of protection about Canada generally or about Quebec, the observations regarding the international transfers regime to ADAMS are still valid (see Opinion 04/2009).
49. Taking the previous remarks into account, the Art. 29 WP considers that it would be appropriate for the Code to clearly state what is the responsible supervisory data protection or privacy authority. This would help to clarify questions on applicable law, to have a more comprehensive and detailed information as to the different elements of the powers that this authority may exercise on the context of its supervisory functions, in particular in relation to ADAMS, and also to assess the consequences of an eventual Adequacy Decision of the Commission and favour effective cooperation between European Data Protection Authorities and its Canadian (Quebec) colleague.
- ✓ *International Standard for Therapeutic Use Exemptions (ISTUE)*
50. With regard to Therapeutic Use Exemptions, the Art. 29 WP reiterates its remarks on the need to find appropriate legal grounds to process personal data and in particular sensitive data. Opinion 4/2009 highlighted that “*as to the processing of medical data, for example for Therapeutic Use Exemptions, the only possible ground is national legislation that meets the requirements of article 8 (4) of Directive 95/46/EC*”.
51. In this sense, the Art. 29 WP would like to point out that although the ISSPI provides that anti-doping organisations shall only process personal information if they have been explicitly authorised to do so by applicable law, and that the ISTUE states that processing of Personal Information in the TUE process shall comply with the ISPPPI, the ISTUE in itself appears to exclusively rely on Athletes’ consent to allow for the processing of personal data.
52. The ISTUE provides that personal information will be transferred to WADA in different occasions. Article 5.2 indicates that an Athlete applying for a TUE shall provide written consent for the transmission of all information pertaining to the application to WADA. Article 7 requires International Federations and National Anti-Doping Organizations to report to WADA, through ADAMS, the granting of a TUE including the approved substance or method, dosage, frequency and route of administration, the duration of the TUE, any conditions imposed in connection with the TUE, and its entire file.

53. The Art. 29 WP understands that these transfers of information may be related to WADA's faculty to review the grant of a TUE. The Working Group cannot assess the need for this general supervisory power the ISTUE attributes to the WADA. However, the fact that the ISTUE does not explain the circumstances that may lead to a review of a decision to grant a TUE prevents a proper assessment of the necessity and proportionality of transfer to WADA of all information on the granting of a TUE, including the complete file, to WADA. Therefore, consideration should be given to the inclusion in the ISTUE of a clarification on the circumstances under which a review may take place.
54. On the other hand, as already noted, the ISTUE, states that all transfers of information to WADA in the context of the procedures related to the granting, denial or revision of a TUE must be made through ADAMS. This obligation appears to contradict other provisions both of the Code and of the ISPPi that allow for all transfers of information to be made using either ADAMS or other system authorized by ADAMS. Without prejudice to the remarks with regard to the way in which these alternative systems are dealt with, the Art. 29 WP would welcome a harmonization of the relevant provisions in the ISTUE with the corresponding ones in the CODE and in the ISPPi.
55. Finally, the Art. 29 WP would recommend the adoption of a standard form for decision on TUE (just as one exists for TUE application form) in order to avoid as much as possible that unnecessary data are disclosed in the TUE authorisation.
- ✓ International Standard on Testing (Whereabouts)

#### **4.6 Collecting whereabouts information -Annex I – Code article 2.4.: Whereabouts requirements**

56. The Art. 29 WP welcomes with the progress made on the rules regarding the collection of whereabouts information regarding the identification of appropriate criteria that Anti-Doping Organisation should be take into account to analyse which athletes are at risk of using doping and in what way. In particular the Art. 29 WP is pleased to note that these factors are also relevant to the extent of whereabouts information to be required from specific Athletes that have been identified as high-risk persons on the basis of the risk assessment and prioritizing exercises set out at Clauses 4.2-4.5 of the Standard.
57. The Art. 29 WP would like the Article 4.6.4 to be amended as to reflect the fact that not all Athletes in a Registered Testing Pool may be required to comply with the Code Article 2.4 Whereabouts Requirements if the Anti-doping Organisation is able to find those Athletes for No Advance Notice Testing, during Out-of-Competition periods, by using less whereabouts information than those required by Article 2.4 of the Code. In particular, the language in Article 4.6.4 is in contradiction with the introduction of

Article 4.6.1 (which provides that an Anti-Doping Organisation should not collect more whereabouts information than it needs for the purpose of conducting Testing on Athletes identified in accordance with the risk assessment and prioritizing exercises set out at Clauses 4.2-4.5) and with the clarifications provided in the comment to Article 4.6.3. The same considerations should be made with reference to art. 1.1 e 1.2 of Annex I of the Standard concerning whereabouts requirements.

58. Comment to 4.6.5: does not take into account the requirements of the principle of necessity, proportionality and data minimization with respect to the purposes of out of competition testing. If the same Athlete is put into different tiers, for example by his/her International Federation and his/her National Anti-Doping Organization, depending on the priority put on Testing him/her, each Anti-Doping Organizations with Testing jurisdiction over an Athlete should have access on a need-to-know basis only to the whereabouts information related to him/her which it considers necessary to find the Athlete even if ADAMS is used to collect whereabouts information from Athletes.
59. With regard to the filing requirements of regular activities other than competition an training and to the disclosure of overnight locations on each day set forth by Article 3.1 lett. d) and e) of Annex I of the Standard, the Art. 29 WP questions whether is necessary to know where Athletes are and what they are doing almost for the whole day for the purpose of conducting effective out-of competition testing programmes. In this regard, Art. 29 WP points out that it should be avoided in any case to interfere in the “athletes” private lives or reveal sensitive data regarding him/her or third parties (e.g. relatives). However, the wording of Article 3.1 does not allow Athletes to understand unambiguously the level of detail required and thus to avoid to incur in a Filing Failure or a Missed Test. In order to prevent the collection of information that could lead to undue interference in the Athletes’ private lives or reveal sensitive data of the Athletes or of third parties, Article 3.1 should be amended in order to clarify what kind of information and for what period of time information on regular activities other than competition an training and on overnight locations have to be provided. As the Art. 29 WP stated in its earlier opinions of 2009 (WP162), information about four hours a day should be considered proportionate.