

ARTICLE 29 Data Protection Working Party



Brussels, 7 February 2012

Commissioner Androulla Vassiliou
 Commissioner for Education,
 Culture, Multilingualism and Youth
 European Commission
 B – 1049 Brussels

Dear Commissioner Vassiliou,

In connection with your upcoming meeting with representatives of the World Anti-Doping Authority (WADA) on February 9, 2012, the Article 29 Working Party would like to inform you of its work on privacy and data protection issues in the context of the fight against doping.

The Working Party expressed its first concerns in Opinion 3/2008 of 1 August 2008 on the World Anti-Doping Code Draft International Standard for the Protection of Privacy (WP 156)¹.

The Article 29 Working Party subsequently studied an amended version of this draft standard in Opinion 4/2009 of 6 April 2009 on the World Anti-Doping Agency (WADA) International Standard for the Protection of Privacy and Personal Information (ISPPi), on related provisions of the WADA Code and on other privacy issues in the context of the fight against doping in sport by WADA and (national) anti-doping organisations (WP 162)². The second opinion the Working Party has a broader scope and examines the relevant provisions of the World Anti-Doping Code in relation to privacy and personal data protection. The Working Party also decided to directly address the national anti-doping authorities in charge of implementing the Code and its Standards.

The ISPPi entered into force on 1 June 2009. Some of the Article 29 WP's remarks had been taken into account (see the footnotes of the second opinion WP 162). In spite of this entry into force the Working Party thought it useful to meet WADA representatives during its plenary meeting of 16 June 2009.

In the press release following this hearing the Working Party noted with great satisfaction that privacy and data protection had become a matter of public concern and that WADA had deemed essential to regulate its testing practices with a Privacy Standard being just as legally binding as the anti-doping code itself. Through the ISPPi WADA wishes to guarantee a minimum level of data protection in countries which have no legislation on this matter and in countries having data protection legislation which has not yet been recognised as adequate. Admittedly, the Privacy Standard provides that it is applicable without prejudice to any

¹ http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2008/wp156_en.pdf

² http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2009/wp162_en.pdf

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Fundamental Rights and Union Citizenship) of the European Commission, Directorate General Justice, B-1049 Brussels, Belgium, Office No MO59 2/13.

Website: http://ec.europa.eu/justice/policies/privacy/index_en.htm

national provision on data protection. Thus, the national legislations transposing Directive 95/46/EC – and in the future the new regulation – overrule the Standard. The Article 29 Working Party therefore continues to plead for a high level of protection in compliance with the requirements of European Directive 95/46/EC, as it also does in other bodies elaborating directives, recommendations and other documents with a view to promoting common international protection.

As mentioned above, the second opinion also directly addresses national anti-doping authorities. The Article 29 Working Party is aware of the pressure put on them by national legislators. Draft legislations, for instance, are submitted to WADA (sometimes even before the national data protection authority is consulted); anti-doping policies are examined by WADA which can lead to a prohibition to organise large manifestations in case of negative evaluation of a policy or the end of the accreditation of laboratories. In this context it is necessary to reassert European data protection regulations.

However, WADA claimed that it is impossible to implement all of the remarks made by the Article 29 Working Party in so far as they are incompatible with current and well-established practices. In the view of the Working Party these suggestions will contribute to a better protection of the private life of athletes, while respecting and supporting the necessary worldwide fight against doping. I would now kindly request you to emphasise in your meeting with representatives of WADA the importance the EU (Commission) attaches to the protection of privacy of all its citizens. This position is also stressed in the Commission's recently published Communication on a European Data Protection Framework for the 21st Century (Com(2012)9 Final).

I hope that by emphasising this aspect you may be able to achieve that WADA will give more serious consideration to a stronger protection of the privacy of athletes in its upcoming revision of the Anti-Doping Code and the International Standard for the Protection of Privacy and Personal Information (IPSSI).

The Working Party remains at the Commission's disposal to examine proposals for concrete modifications to the Code and its Standards that have an impact on data and personal data protection issues when these fall under the Working Party's competences.

At this stage, since WADA has submitted no proposals (for texts), the WP can only repeat some of its earlier remarks. Only a few of the Article 29 WP's requests for modifications have been taken into account in the currently applicable version of the Standard on the Protection of Personal Information. As for WADA's justifications for not considering other remarks of the WP, these are not always convincing and in general, the conclusions of the Working Party's second opinion remain relevant. They clarify the Working Party's main concerns and requests.³

³ They relate to:

the imprecision of the definition of certain terms;

the safeguards that must be provided for the processing of sensitive data;

the role of consent as a legal ground;

the implementation of the principles of necessity and proportionality for

the processing operations performed and the data processed; o retention periods;

the publication of sanctions;

the observation of the rules on transborder data flows.

Enclosed you will find the relevant excerpts of WP opinion's WP 156 and WP 162, as well as WADA's reaction to specific points and the WP's current conclusions.

We hope this information will prove useful to you and remain at your disposal, particularly through the Working Group created by the Art. 29 WP dedicated to this specific issue of data protection in the fight against doping.

Yours sincerely,

On behalf of the Article 29 Working Party,

A handwritten signature in black ink, consisting of a large, sweeping loop followed by several smaller, more intricate strokes.

Jacob Kohnstamm
Chairman of the Article 29
Working Party

Remaining problematic issues

1. Imprecision of the definition of certain terms

1.1. The term "Participant"

1.1.1. WP 29 Opinion 04/2009

The Working Party considers that the concept of "Participant" - as defined by the Code and the Privacy Standard - is too restrictive to guarantee protection to any person about whom data can be processed within the framework of the implementation of the Code. In this context, please note that the Code, amongst others in various articles dealing with hearings on anti-doping rule violations and on publication of violations, uses the unrestricted term "person" (for example articles 8 and 14 of the Code). The provision of information provided by article 7 and the rights provided by article 11 of the Privacy Standard are however limited to "participants". While the Working Party recognises that only athletes and their support personnel will be required to provide personal data to WADA, it would help to avoid confusion if the use of terms was consistent across the Privacy Standard and the Code.

1.1.2. WADA comment

The Working Party would expand the scope of the Standard to apply to "persons," not just "Participants." This would expand the scope of the document in a material way, leading it to apply, for instance, to an ADO's processing of employee or vendor data. Also, WADA disagrees with the characterization of the term "Participant" as "restrictive". The term is defined expansively under the Code to encompass not only athletes, coaches, trainers, managers, agents, team staff, officials, medical and paramedical personnel, and parents, but also "any other person" "working with, treating or assisting" an athlete "participating" or "preparing for" sports competitions. To the extent the Working Party has concerns that any individuals may not be adequately protected, Article 4.2 of the Standard (and its commentary), ensures that any ADOs, including those in the EU, processing personal information 'relating to persons other than "Participants must abide by their applicable data protection laws.

1.1.3. WP 29 conclusion

The Art. 29 WP maintains the above comment.

1.2. The purpose of anti-doping control

1.2.1. WP 29 Opinion 04/2009

The specific purposes of the data processing tamed out under the Code should be defined and specified. The mere reference to data processing by the anti-doping organisations "in the context of their anti-doping activities" (article 4.1 of the Privacy Standard) and the formulation in article 5.1 of the same Standard ("Anti-Doping organizations shall only process personal information where necessary and appropriate to fulfil their responsibilities under the Code and International Standards") are not sufficient. Article 5.3 refers to a number of purposes for which data can be processed. It is unclear how these differently worded purposes are to be understood, so the Working Parry suggests that this point be clarified.

Similarly, the purposes for disclosing personal data to other Anti-Doping Organizations mentioned in article 8.1 could be specified.

In addition, the Working Party stresses the need to respect the "finality principle" and the requirement for compatibility of further data processing with the initial purpose for which the data were collected.

1.2.2. WADA comment

The Working Party seeks greater clarification as to the purposes for which athlete data will be processed. Yet, the purpose descriptions set out in the Standard already are more detailed than those in many applicable national sports laws and regulations. For example:

- France: Code du Sport, Livre II, Chapitre III: contains no precise purpose description or purpose limitation. As a result, only the very general language of the data protection law applies. Similarly, the template "Rules of Procedure" for anti-doping 'authorities, attached in the Annex to the Sports Code,' does not contain -a precise, purpose description or purpose limitation rule; in fact it contains' hardly any data protection provisions at all.

- Netherlands: Nationaal Doping Reglement, Art. 27: contains no precise purpose definition and no purpose limitation ("De 'Bond, de Dopingautoriteit; alsmede eventuele andere dopingcontrole-uitvoerende organisaties, dragen zorg voor het verwerken van de in het kader van de uitvoering van dopingcontroles verzamelde persoonsgegevens conform het gestelde in de Wet Bescherming Persoonsgegevens."). As a result, only the very general language of the data protection law applies.

- Spain: Ley Organica 7/2006, Art. 34(2): only contains a very general purpose description and no purpose 'limitation ("Los datos, informes o antecedentes obtenidos en el desarrollo de sus funciones solo podran utilizarse para los fines de control del dopaje y, en su caso, para la denuncia de hechos que puedan ser constitutivos de infracción administrativa o de delito.") As a result, only the very general language of the data protection applies.

Once again the Working Party seems to impose demands of a worldwide standard that are not even' satisfied' in the EU.

1.2.3. WP 29 conclusion

The Working party maintains its request. See below on retention period for whereabouts.

2. The safeguards that must be provided for processing sensitive data

2.1. WP 29 Opinion 04/2009

In opinion 04/2009 the WP observed that except for Article 9 (Maintaining the Security of Personal Information), the Privacy standard does not offer additional guarantees for the protection of health data and judicial data processed within the framework of the anti-doping activities.

2.2. WADA comment

In its comment WADA holds that the Art. 29 WP's opinion is incorrect. Besides Article 9, WADA has set forth additional protections for "Sensitive Personal Information", which

includes health and judicial data, at Article 6.2. of the Standard, and processing of “Sensitive Personal Information” reflecting the greater sensitivities associated with processing that information. The Working Party seeks “additional guarantees” without specifying what those would be, and yet no such equivalent requirement exists under the Directive.

2.3. WP 29 conclusion

In its comment WADA refers to article 6.2., which reads as follows: “Where Anti-Doping organisations process sensitive personal information with consent, a Participant’s informed and express and written consent shall be obtained. The processing of sensitive information shall occur in accordance with any specific safeguards or procedures established under locally applicable data protection laws and regulations.”

The Working Party appreciates the specifications on the quality of consent. Additional safeguards for the processing of sensitive data could relate to the capacity of the person processing the data (a healthcare professional for health data) or at the very least to an obligation of professional secrecy or a confidentiality agreement. An adequate retention period taking into account the sensitivity of the data should also be provided for (see remarks on the retention period below). Moreover, the publication of a judgment on the internet constitutes a processing of sensitive data – see the remarks on sanctions. In general, Directive 95/46EC, because it is a directive, has of course been transposed into national legislation providing for specific safeguards.

It appears that the national anti-doping authorities are expecting specifications (safeguards), which would guarantee the uniformisation WADA desires, but also equal treatment of any individual subject to the Code. This remark also holds in general: certain studies show that national anti-doping policies vary substantially in intensity and severity (and have a direct impact on data processing operations), as the European Parliament observed, particularly during the hearing organized by the LIBE Committee on 30 June 2011. These specifications (additional safeguards), if provided for by the Code or the Standard, would go further than a strictly European approach. The Working Party remains at the disposal of the Commission to comment on the specifications in the future if required.

3. The role of consent

3.1. WP 29 Opinion 04/2009

In its opinion the Art. 29 WP also insisted on the necessary characteristics of consent pursuant to article 2(h) of the Directive. The Working Party was of the opinion that 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. The Working Party was pleased to observe that the currently applicable version provides that consent is no longer the only legal ground.

3.2. WADA comment

The above discussion is surprising, as well as inaccurate. As WADA indicated in its September submission to the Working Party, the Standard was amended specifically in response to the Working Party's August opinion in an effort to limit the importance for and,

role of consent. As a result, consent is no longer a necessary basis, only a possible basis, for ADOS processing personal data.

As the opinion only later goes on to acknowledge (but only in passing), the opinion permits personal data to be processed where permitted by law. Thus European ADOs need not rely on consent when applying the Standard. (...). Ultimately, if the Working Party's position is that any reference to consent should be deleted entirely, then WADA obviously cannot agree. It would be a remarkable demonstration of legislative imperialism for the Working Party to impose a legal basis on the rest of the world (or deny them a basis (consent) they may need under their existing laws). The opinion expresses a view on consent that many in the rest of the world reject.

3.3. WP 29 conclusion

WADA's position regarding Art. 29 WP comments remains ambiguous, which is illustrated by the comment above. Although WADA requests the Art. 29 WP's opinion, it remains highly critical of any exclusively European position. Nevertheless, the Working Party does not intend to replace/impose its opinion with that of/on the rest of the world, but is only willing to reassert European requirements. Consequently, the Art. 29 WP still holds that, considering the requirements of Directive 95/46/EC, consent cannot be authorised as a legal ground in the fight against doping. More in general (beyond the purely European perspective), the Working Party is of the opinion that consent is not an adapted legal basis in the fight against doping (fragility of consent).

4. Implementation of the principles of necessity and proportionality

4.1. For the processing operations carried out and the data processed

4.1.1. WP 29 Opinion 04/2009

The Privacy Standard does not distinguish between the various categories of persons subject to it (athletes, supporting staff, third party). However, the application of the proportionality principle will depend on the category to which the person belongs. Consequently, the Privacy Standard should be modified in this regard.

Article 5.3. of the Standard should specify the personal information or the categories of personal information necessary to achieve the purposes referred to in (a), (b) and (c) by taking into account the requirements of the principles of necessity and proportionality. As previously indicated, the implementation of these principles will vary according to the category of persons whose data will be processed (athlete, supporting staff).

4.1.2. WADA comment

In its replies to the Art. 29 WP's opinion, WADA believes that the Working Party's request to distinguish between the various categories of persons subject to the ISPP (athletes, supporting staff, third party) is unrealistic. WADA points out, correctly according to the Art. 29 WP, that "the correct application of the proportionality principle will vary on a case-by-case basis, taking into account not only the "category" of participant (e.g. athlete, trainer, medical personnel or other) but also on a number of other factors such as the purposes of the processing, the current state of anti-doping technologies and testing techniques and potentially, factors unique to each ADO and its applicable legal regime. It would be totally unrealistic for the Standard to attempt to define precisely what the principle permits or forbids

in the multitude of different contexts in which ADO's process personal data. In short, WADA believes that this is an area where some flexibility within the Standard is unavoidable and appropriate.

4.1.3. WP 29 conclusion

The Art. 29 WP maintains the above comment and request. Without entering into unnecessary details, it should be possible to establish which categories of data are processed for which category of persons. Transparency would thus increase without compromising the efficiency of the fight against doping

4.2. For retention periods

4.2.1. WP 29 Opinion 04/2009

The Working Party welcomes the inclusion in the Standard of a provision relating to the duration of retention of data and of the obligation to erase those data when they are no longer needed, having regard to the purposes for which they were processed (article 10).

WADA has indicated to the Article 29 Working Party that whereabouts information is retained in ADAMS for up to 18 months. Article 2.4 of the Code states that "any combination of three missed tests and/or filing failures within an eighteen-month period as determined by Anti-Doping Organizations with jurisdiction over the Athlete shall constitute an anti-doping rule violation".

Most other information, such as test plans, test results, therapeutic use exemptions and their underlying documentation, records of doping violation procedures and so forth are retained for a minimum of eight years. The justification for the eight year period is because eight years has been established by article 17 of the Code as the period after which no action may be commenced against an athlete or other person for an anti-doping rule violation asserted to have occurred (statute of limitations period). This is considered appropriate as it would span at least two Olympic Games. It is also considered to be justified by the fact that this is the period during which a new offence will count as a second offence by the Court of Arbitration for Sport. WADA also indicates that it is possible that some ADOs retain data for longer¹⁶.

The Working Party questions the relevance and necessity of these retention periods.

Whereabouts (18 months)

As to the whereabouts information, the Working Party 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 14.3 of the Code itself provides the following rule for the retention of whereabouts information: This 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 could only be retained longer if the anti-doping organization considers there is an alleged whereabouts filing failure and/or missed test. In such case, a retention of 18 months is justified, as three alleged whereabouts failures amount to an alleged anti-doping rule violation. Once, however, it is determined that there has not been an anti-doping rule violation, the whereabouts information should be deleted. The Working Party therefore urges WADA to change its policy on the retention of whereabouts information in light of the above.

The other data

The Working Party considers that the retention of information on convictions for a maximum of eight years could be necessary in light of the fact that a new offence would count as a second offence by the Court of Arbitration for Sport.

However, it would not be necessary to retain all data for the purpose of commencing future actions. For example, the Working Party considers there could be a reason to retain samples, as new techniques developed later could be able to detect substances that were untraceable at the time of collection of the sample. There does not seem to be a justification for retaining up to eight years the documentation underlying therapeutic use exemptions, test planning, anti-doping cases resulting in an acquittal for the athlete, etc..

The Working Party would call upon WADA to reconsider its statute of limitations period of eight years for all anti-doping rule violations. The anti-doping rule violations range from use by an athlete of a prohibited substance, to possession of prohibited substances and prohibited methods (see article 2 of the Code). Would WADA consider it to be justified to be able to start proceedings against a person eight years after an alleged violation has occurred, regardless of the type of anti-doping violation? The Working Party suggests that WADA consider a more proportionate approach, depending amongst others on the types of violations. The Working Party therefore invites WADA to determine, taking into account the experience gained in that field, more reasonable maximum retention periods for the various categories of personal data. It also advises WADA to ensure that the ADOs are obliged to adhere to these retention times.

4.2.2. WADA Comment

Whereabouts

The retention of whereabouts information for the minimum 18 months is critical to investigate possible violations of the Code and to help focus testing efforts on the high risk athletes – a requirement stressed by the Working Party in 3.1. For example, athletes who consistently fill out the 6-to-7a.m time slot; and 10-to-11pm time slot of the next day (leaving as much time as possible between two likely testing slots) could be targeted. Similarly, athletes who are consistently not where they said they "could" be outside their one-hour time slot could be targeted.

The other data

The Working Party seeks a more "reasonable" retention period, and asks whether it would be justifiable for an ADO to commence proceedings against an athlete eight years after an alleged violation took place. Apparently, this strikes the Working Party as disproportionate and somehow unfair to the athlete.' The Working Party would substitute their judgment for the judgment of the entire sports community, including sports bodies, national governments (including many from Europe), athlete representative bodies and others, who arrived at the existing rule following lengthy consultation and debate.

4.2.3. WP 29 conclusion

WADA's justification does not convince the Art. 29 WP. The Working Party maintains its above comment and request.

Moreover, WADA's justification for localisation data indicates different purposes than those provided for by article 14.3 of the World Anti-Doping Code, i.e. a (systematic and) statistical analysis of localisation data to find potential violations (profiling). If these analyses lead to planning, coordinating and performing doping controls in the meaning of article 14.3 of the Code, the prior treatments envisaged in WADA's justification serve a different prior purpose (profiling), leading to controls.

WADA appears to think that the control purpose must be understood in a broad and "encompassing" manner. The Art. 29 WP does not share this point of view. As mentioned in the opinion as a general observation regarding purposes (see above), purposes must be specified. The purpose WADA mentions in its justification should at the very least be made explicit in article 14.3. of the Code and the athletes should be fully informed about this. 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.

Regarding the retention period of other data (not localisation data), the Working Party maintains its request. It appears that WADA has misunderstood the scope of the remark of the Working Party, which does not wish to replace its evaluation with that of the sector, but wants to recommend retention periods respecting the principles of necessity and proportionality.

4.3. For the publication of sanctions

4.3.1. WP 29 Opinion 04/2009

3.6.1. Preventing athletes from taking on another role in sports or participating in another sport. In order to prevent athletes from taking on another role within organized sport or participating in another sport while banned by the Code from doing so, public disclosure is not necessary; less far-reaching measures will be satisfactory. For example, the Working Party mentions the introduction of a procedure in which a 'certificate of good character' has to be submitted. If such means would not be effective or adequate, a restricted form of electronic publication required for the persons in charge of supervising the effective respect of the sanctions and the persons responsible in sport associations could be considered necessary for the given purpose. The disclosure of personal data on a website anyone can access, however, is considered disproportionate for this purpose.

3.6.2. Deterrent effect: with respect to the objective of deterrence put forward by the WADA, the Working Party is not convinced by the necessity – and consequently the proportionality – of publication on the internet of all sanctions. The comparative assessment of the interests of the processor on one hand, and the fundamental rights of the data subject on the other hand, will lead to the conclusion that public disclosure, on the internet or otherwise, for reasons of deterrence and sanctioning, of personal data related to convictions, without regard to the circumstances of the case, is disproportionate. In case an athlete is found guilty of a doping offence, the athlete will be sanctioned in accordance with articles 9, 10 and/or 11 of the Code and will for example be disqualified, declared ineligible and/or sanctioned financially. Whether or not an additional sanction, publication, would be necessary, could only be decided taking into account the specific circumstances of the case. Elements that should be considered in this context 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, 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 it is considered that publication of sanctions would be necessary, other less intrusive means of publication

should be considered: A onetime publication immediately following the judgment, for example by a press release, could also be sufficient. Furthermore, setting a minimum period of a year for publication of sanctions does not seem to be justified.

As to the second element of deterrence, awareness raising towards other athletes, other less intrusive measures should be considered sufficient. Anonymous publication of sanctions, including relevant factors such as the level at which the athlete competes, and statistical information, could similarly serve the given purpose. Moreover, any publication on the Internet is considered more intrusive than publication by off-line means. It does not only entail that anyone can consult the data, but also implies that the data published online can be used for other purposes and be further processed, meaning that they can still be disclosed after the sanctions have expired and when the publication on the web site is no longer anonymous. In its first opinion 3/2008, the Working Party already questioned whether such a disclosure was proportionate. Despite further investigations and explanations given by WADA, for the reasons given above it is still concerned about this subject. In conclusion, the Working Party is of the opinion that a publication on the Internet for the duration of one year is not necessary to obtain the purposes stated by WADA, since it considers both that these purposes can be obtained in a way that is less damaging for the persons concerned, and that the effects of the measure are disproportionate with respect to these purposes.

4.3.2. WADA comment

WADA continues to believe, on the basis of its experience, that the publication of anti-doping violations is one of the most important deterrents. Moreover, in our view the data protection implications of publication are being overstated. First, many cases reach the press (including online and for period of more than one year) well before a final decision. The publication of the final decision may actually help an athlete respond to erroneous information communicated in the media. In addition, it is difficult to see how the Code's limited 'publication requirements would violate data protection law, given that many tribunals currently; publish their decisions online. For example, decisions by the European Court of Human Rights remain on that body's website for over fifty years.

4.3.3. WP 29 Opinion 04/2009

The Art. 29 Working Party maintains its comment and holds that the publication of a judgment on the internet including names, for a duration of 1 year is disproportionate. Is WADA able to demonstrate the dissuasive effect of such a publication?

Remark: the analogy with the judgments of the European Court of Human Rights is not relevant. Anonymity can be requested from the Court, and is sometimes even granted by the Court of its own accord. Furthermore, in general private persons are applicants (victims) before the European Court of Human Rights; whereas before anti-doping authorities in most cases they are defendants.

See article 47, § 3 of the Rules of the European Court of Human Rights: "Applicants who do not wish their identity to be disclosed to the public shall so indicate and shall submit a statement of the reasons justifying such a departure from the normal rule of public access to information in proceedings before the Court. The President of the Chamber may authorise anonymity or grant it of his or her own motion."

5. TRANSBORDER DATA FLOWS

The Art. 29 WP opinion of 6 April 2009 elaborates on the necessity of observing the rules on transborder data flows, addressing both national anti-doping authorities and WADA. Since the adequacy of the Quebec data protection act has not been formally recognised, the Working Party enumerates possible legal grounds pursuant to article 26 of Directive 95/46/EC.

A formal request for recognition of the adequacy of the abovementioned Quebec legislation has now been submitted to the European Commission. The adequacy analysis is on-going. An opinion of the Art. 29 WP has not been requested yet.

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Conclusions of Art. 29 WP Opinion 04/2009

Following its analysis, the Article 29 Working Party reiterates its support for WADA's initiative. Even if it is aware of the importance – among others for athletes' health – of the fight against doping in sport, it insists on pursuing this fight with respect for the fundamental rights of athletes and their entourage, particularly for the right to protection of their privacy and personal data. While the adoption of the International Standard on the Protection of Privacy and Personal Protection by WADA is an encouraging sign from the point of view of raising awareness about the protection of personal data, care should be taken to avoid the false belief that it ensures, throughout the world, an adequate level of protection for personal data processed in the EU, as required by EU law. Certain adaptations were clearly made to the Privacy Standard as a result of the Working Party's first opinion. On the previous pages the Working Party has nevertheless highlighted numerous issues that remain problematic. It urges WADA, as well as national anti-doping organisations, (inter)national sport federations and Olympic committees, to pay attention to these issues and invites national organisations in particular to take them into account during their activities. The Working Party would like to stress some of these issues, notably that consent cannot be the basis for a legitimate processing, whether it relates to sensitive data within the meaning of articles 7 and 8 of Directive 95/46/EC or not. Data transfers to the ADAMS database, established in Canada, and onward transfers from ADAMS, will have to meet the requirement of an adequate level of protection in the destination country. If this level cannot be considered adequate, transfers can only take place on the basis of certain exceptions, mentioned in article 26 of the Directive, provided that they are not regular or massive, which would make the exception the rule. Regarding the publication of sanctions on the Internet for a duration of one year, the Working Party is of the opinion that this is not necessary to achieve the purposes put forward by WADA, since on the one hand the Working Party believes they can be achieved in a way that would be less damaging for the persons concerned and, on the other, that the effects of the measure are disproportionate in comparison with these purposes. It is also in light of the proportionality principle that the Working Party invites WADA and anti-doping organisations to reassess the collection of Whereabouts as it is conceived today, and more in general, the current retention period of processed data. The Working Party trusts that all ADOs and other actors involved will take up their own respective responsibilities to ensure that the remarks made by the Working Party are fully taken into account, and that full compliance with EU data protection rules will be guaranteed.