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from: General Secretariat of the Council

to: Permanent Representatives' Committee (Part 1) / Council

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Subject: EU contribution to the revision of the World Anti-Doping Code and International Standards

- Approval of the text

1. The World Anti-Doping Code provides the basic framework for harmonised anti-doping policies, rules and regulations within sport organisations and among public authorities. The World Anti-Doping Agency (WADA) has launched a Code revision process with a view to adopting a revised Code at the fourth World Conference on Doping in Sport in Johannesburg, South Africa in November 2013.

2. The first three EU contributions, which were agreed by the Council¹ and submitted to WADA on 14 March, 5 October 2012 and 28 February 2013 respectively by previous Presidencies.
3. Given that the latest draft of the revised World Anti-Doping Code and related International Standards continues to have an impact upon different aspects of EU legislation, notably data protection and free movement, the Working Party on Sport² has prepared, at the invitation of the Presidency, an EU Contribution to the World Anti Doping Code review process. At its meeting on 12 July 2013, the Working Party on Sport reached a broad consensus on the text of the EU contribution set out in the Annex to this Note.
4. The Committee of Permanent Representatives could now invite the Council, as an "A" point at one of its forthcoming sessions, to
 - agree on the text of the EU contribution set out in the Annex to this Note
 - authorise the Presidency to submit the EU contribution to WADA.

¹ Doc. 6846/1/12, doc. 14204/12 and 6427/13.

² The Working Party used as a basis a text prepared by the Expert Group on Anti-Doping established by the Member States and the Commission in the framework of the EU Work Plan for Sport 2011-2014.

Draft

**EU contribution to the revision of the World Anti-Doping Code
and International Standards**

1. Introduction

As part of the revision of the World Anti-Doping Code (Code) and the related International Standards (IS), the EU submitted comments in March and October 2012, and most recently in March 2013.

The 1st EU contribution was based on the existing Code 2009; the 2nd contribution on draft Code 2015 (v. 1.0) and the existing IS; and 3rd contribution on draft Code 2015 (v. 2.0) and draft IS 2015 (v. 1.0). As announced previously, this 4th contribution is based on the draft Code 2015 (v. 3.0) and the draft IS 2015 (v. 2.0), as circulated on 21 June 2013.

This 4th EU contribution is submitted in full awareness of the fact that no formal consultation procedure is offered at this stage. However, the WADA Code drafting team will examine this contribution if it is submitted without delay.

2. Comments on the third version of the Draft Code 2015 (v. 3.0) compared with proposals made in by the EU in its 3rd contribution

The EU recognises and appreciates the positive development as in the new draft version of the Code. In its 3rd contribution,³ the EU had asked for the following proposals to be considered.

³ Council doc. 6427/13, see also:
<http://register.consilium.europa.eu/pdf/en/13/st06/st06427.en13.pdf>

2.1. Written explanations justifying the proposed major changes to the Code (3rd contribution, section 2)

In response to a general request from the EU and its Member States to provide written explanations justifying the proposed major changes to the Code, WADA has recently provided such explanations in writing. WADA has also presented a legal opinion prepared by the former President of the European Court of Human Rights, Mr Jean-Paul Costa, with an assessment of the human rights implications resulting from the proposed Code amendments.

These written explanations are necessary bearing in mind that the Code will ultimately need to be recognised by national governments, according to their commitments under the UNESCO International Convention against Doping in Sport. If governments are to agree to a final version of the 2015 Code, they should be in a position to explain the proposed changes to their parliaments.

- **The EU thanks WADA for the legal opinion of Mr Costa and the written explanations on the changes to the Code.**

2.2. Registered Testing Pools (RTPs) and Whereabouts / respect of the principle of proportionality and human rights (section 2.1. of the 3rd EU contribution); Therapeutic use (section 2.4. of the 3rd EU contribution)

The EU cannot see that steps have been taken in this direction but would welcome such news and offers its assistance. It is important for such guidance to be developed in time for publication by 1 January 2015.

- **The EU reiterates its encouragement and its offer of assistance.**

2.3. Involvement of Governments (section 2.2. of the 3rd EU contribution)

Whereas the EU appreciates the revised text of Article 22.2, where the reference to "a proper legal basis" has been replaced by "legislation, regulation or policies", as well as the clause "subject to human and fundamental rights and applicable national law" which has been added to Article 22.4, the EU nevertheless wishes to restate its comments on Article 22 made in its 3rd contribution. The EU asks WADA to reconsider as many of its proposals as possible. In Article 22.2 the same wording should be used as in UNESCO Convention Article 5. This means that "administrative practices" should also be added to the text.

The new Article 22.6 is describing the relationship between Governments and the NADOs. The EU considers that the autonomy of all NADOs is important and covers all aspects needed including those related to an efficient Anti-Doping programme. Therefore the following wording is suggested: *Each government will respect the autonomy of a National Anti-Doping Organisation in its country.* The deleted text is redundant and potentially misleading, because interference may be of a positive nature and of benefit to a NADO.

- **The EU invites WADA to reconsider Article 22 in line with its previous contribution.**
- **The EU invites WADA to consider the amendments to Article 22.2 to bring it in line with Governments' commitments to the UNESCO Convention.**
- **The EU invites WADA to consider the Article 22.6 to read as follows: *Each government will respect the autonomy of a National Anti-Doping Organisation in its country.***

2.4. Public disclosure (Code Article 14.3) (section 2.3. of the 3rd EU contribution)

In the third contribution, the EU had expressed general satisfaction with the progress made on this important subject. However, if automatic publication is considered a *sanction* (cf. Code Article 10.13), then it should be equally and uniformly applied for international and national level athletes. This is currently not the case, for a variety of reasons, but in particular because data protection provisions differ greatly internationally.

Furthermore, the progress made can only materialise in the form of improved athletes' rights if appropriate non-binding guidance is adopted and circulated by WADA. Reference was made to the solution found, in 2010/11, in relation to the International Standard on the Protection of Privacy and Personal Information (ISPPPI) and the suggestion was made that a similar solution could be found in this case, by developing specific rules on public disclosure subject to international and national law. The EU cannot see that this has been done and therefore reiterates its invitation to WADA.

- **The EU, therefore, invites and gives its full support and cooperation to WADA in developing appropriate nonbinding guidance to improve athletes' rights.**

2.5. Payment of Court of Arbitration for Sport (CAS) cost awards (section 2.7. of the 3rd EU contribution)

The EU acknowledges WADA's decision to alter the proposed text, which the EU sees as a step towards recognising athletes' right to a fair trial.