

The Council of Europe Convention on Manipulation of Sports Competitions: the best bet for the global fight against match-fixing?

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Abstract The paper commences by looking at why there is a need for a new international treaty on match-fixing; the first part of the paper considers what is meant by ‘manipulation of sports competitions’, and the second part considers the recent growth of this phenomenon and its links with organised crime. The third part considers how the Convention came about and what its major provisions are, and also considers the tension between some of the fundamentals of European Union law (specifically the freedoms of movement and provision of services) and the Convention. The fourth part considers to what extent the creation of a sport-specific criminal match-fixing law would enhance the fight against corruption, concluding that it would make little difference. The fifth, sixth and seventh parts analyse what form the “dialogue and cooperation [between the stakeholders] at national and international levels” takes under the Convention, and considers to what extent the present relationship between these stakeholders, respectively, betting operators, sports governing bodies and national regulators, would change. The discussion at Parts IV–VII also considers to what extent the Convention impacts on the traditional relationship between the state and private sports bodies, the so-called ‘sporting autonomy’. The concluding section will summarise the strengths and weaknesses of the Convention, will consider its likely impact upon match-fixing, and consider its relationship with *lex sportiva*.

Keywords Match-fixing · Manipulation · Betting · International Convention

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1 Introduction

Excluding the parallel market in illegal betting, the global sports market has been estimated at 1.8 % of global GDP, surpassing the textile and steel industries, perhaps double that if illegal sports betting is added.¹ As sport has turned into ‘big business’, inevitably crime has followed. Although there is no agreement as to the number of cases since 2000² it appears that detected (and therefore presumably undetected also) incidents of match-fixing have increased dramatically this century compared to the last quarter of the previous century, prompting some academics, sports administrators and commentators to posit that match-fixing is a more serious threat to sport’s integrity than doping.³ This paper considers the provisions of the first major international treaty seeking to address the problem of match-fixing.

The preamble to the 2014 *Council of Europe Convention on Manipulation of Sports Competitions*⁴ summarises its aims, stating that in the light of the

“global threat to the integrity of sport and....involvement of organised crime in the manipulation of sports competitions.....dialogue and co-operation among public authorities, sports organisations, competition organisers and sports betting operators at national and international levels are essential

¹ Vidal et al. (2014), sect. 2.

² See Husting et al (2012), p. 11 for a discussion of the divergent figures given by Forest (2008), Gorse and Chadwick (2010) and Maenig (2005).

³ See Veuthey (2014), Carpenter (2012), Serby (2012).

⁴ Council of Europe Convention on the Manipulation of Sports Competitions CETS No 215. <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/215.htm>.

in the search for effective common responses to the challenges posed by the problem of the manipulation of sports competitions”.

The paper commences by looking at why there is a need for a new international treaty on match-fixing; the first part of the paper considers what is meant by ‘manipulation of sports competitions’, and the second part considers the recent growth of this phenomenon and its links with organised crime. The third part considers how the Convention came about and what its major provisions are, and also considers the tension between some of the fundamentals of European Union law (specifically the freedoms of movement and provision of services) and the Convention. The fourth part considers to what extent the creation of a sport-specific criminal match-fixing law, would enhance the fight against corruption, concluding that it would make little difference. The fifth, sixth and seventh parts analyse what form the “*dialogue and co-operation [between the stakeholders] at national and international levels*” takes under the Convention, and considers to what extent the present relationship between these stakeholders, respectively, betting operators, sports governing bodies and national regulators, would change. The concluding section summarises the strengths and weaknesses of the Convention, and consider its likely impact upon match-fixing.

2 Defining manipulation: match-fixing

Not all⁵ manipulation by participants of sports events carries the same degree of culpability, nor is it always betting related, so there has been much debate about what constitutes corrupt manipulation of sports competitions, also referred to as “match-fixing”.⁶

Deliberate underperformance by participants with a view to influencing the result of a sporting competition or match (i.e. ‘throwing’ or ‘fixing’ a match) could be tactical.⁷ Although such tactical manipulation can be sanctionable under sporting regulations, it is not considered punishable under the criminal law, and it does not involve betting.

Another distinction to be made is between match-fixing and so-called spot-fixing, i.e. underperformance designed not to affect the outcome of the match as a whole, but an event within it.

⁵ See, for example, Zaksaitė (2013), p. 288.

⁶ Maenig (2005), pp. 187–225.

⁷ An example of tactical manipulation was the alleged Formula One race-fixing at Singapore in 2008 or deliberately losing a match in order, for example, to ensure that a lesser opponent is met in the next round of a competition (a recent example being the disqualification of eight badminton players at the 2012 London Olympics).

Although often match-fixing involves an athlete underperforming, it might be an umpire or referee, and the financial gain need not comprise the placing by the corrupt person of a bet from which they stand to gain, it might be the receipt of a bribe.

For all these reasons defining ‘manipulation of sports competitions’ or ‘fixing’ has been problematic. The common understanding of the corrupt ‘manipulation’ of sports competitions is betting-related fixing, whereby a participant seeks to make a financial gain, through deliberate underperformance, whether associated with match or spot-fixing.

The definition of ‘Manipulation of sports competitions’ in the Convention is a broad definition as it omits reference to financial gain, so includes tactical under performance

““Manipulation of sports competitions” means an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others”.⁸

Hereafter, for ease of reference, betting-related manipulation of sports competitions, whether in regard to the overall result or merely an incident within a match, is referred to as “match-fixing”.

3 The growth of match-fixing globally: fuelled by organised crime?

Match-fixing is not an exclusively twenty-first century phenomenon. In 1965, following an investigation by the *Sunday People* newspaper two English professional (and international) Sheffield Wednesday footballers, Tony Kay and Peter Swan, and eight other players were given prison sentences ranging from 4 months to 4 years in relation to match-fixing convictions. Earlier in the last century and on another continent, there was the infamous case of “Shoeless Joe” and the fix of the World Series major league baseball in 1919.⁹

Match-fixing is a truly global phenomenon, as evidenced by the Brazilian football match-fixing scandal in 2005,¹⁰ the Hanse Cronje South African cricket scandal in 2000,¹¹ the scandal of sumo competitions in Japan in 2011¹² and the 2011 “Calcioscommesse” football scandal (financed

⁸ Convention article 3.4.

⁹ Husting et al. (2012), p. 10.

¹⁰ Rumsby (2013).

¹¹ Serby (2012).

¹² Husting et al. (2012), p. 11.

out of Singapore, the corruptors acted in Italy, bets were placed all over Asia, and the money proceeds were laundered through Panama).¹³ The infamous Bochum match-fixing scandal (2009–2011) in football led the police investigation team to suspect 323 matches as being suspicious of which 75 were in Turkey, 69 in Germany and 40 in Switzerland; involving payments to referees and players and coaches of 12 million Euro; account movements were traced to Russia, Malaysia and China as well as several European countries.¹⁴

It is impossible to ascertain empirically which competitions and sports (at what level and in which parts of the world) are most at risk of ‘fixing’ or manipulation.¹⁵ Certain sports whether through their episodic nature, or the fact that one individual’s actions can greatly affect the course of a match, lend themselves more easily to being fixed. In cricket and football, the two sports most commonly identified as being subject to match-fixing,¹⁶ individual players can easily change the course of the game through their actions, or contrive a single incident on which a bet may be placed (the so-called spot-fixing), for example, in football the timing of the first corner or sending-off of a player. In the case of the three Pakistani cricketers imprisoned in the UK as a result of the ‘no-balls’ bowled in the course of an international match in London in 2010, the “manipulation” comprised simply overstepping the bowlers’ mark on three occasions by a few centimetres, <2 min’ action in a game lasting approximately 30 h and in the normal course of events incapable of affecting the overall result of the match. Similarly in tennis, another sport that has been identified as greatly affected by match-fixing,¹⁷ one individual can easily manipulate events¹⁸ and betting odds, as evidenced by the Savic case,¹⁹ in which David Savic the Serbian tennis player offered an opponent USD 30,000 to lose the first set, with Savic agreeing to lose the subsequent sets and hence the match (he was banned for life in 2011). This case also illustrates how recent changes to the betting markets (discussed further below), for example, the introduction of ‘live betting’ (taking bets during a match while the odds are changing all the time dependent on the state of the match), has greatly increased the threat to the integrity of competitions. Cricket and

football are the sports most affected, within 15 years no less than four of the ten major cricket playing nations have had their captains banned from playing any form of cricket worldwide for periods of between 5 years and life for match-fixing.²⁰ Minor sports²¹ have not been spared as attested to by the Stephen Lee snooker case,²² the 2012 Montpellier handball scandal²³ and in 2014 it was revealed that two of the top ranked international badminton players were approached to fix one of that sport’s leading tournaments.²⁴

Despite the steps taken, as discussed below, in light of the global sporting community being aware since approximately 2000 of the emerging fixing crisis, the problem shows no sign of abating.²⁵ Sportradar, a respected company supplying sports and betting-related live data, odds solutions and fraud detection services, and which works closely with the governing body of European football, the Union of European Football associations (“UEFA”), stated in 2013 that of 30,000 football games monitored between 250 and 300 were highlighted as being fixed.²⁶ In October 2014 players from Spanish clubs Real Zaragoza and Levante appeared on summons before the state prosecutor’s office implicated in a match-fixing scandal that the Spanish football authorities said involved investigation into nine suspect matches.²⁷ Nor does match-fixing threaten just the higher level competitions, more recently match-fixers have been involved in lower level competitions, where there has been less official scrutiny.²⁸ In June 2014 three men were imprisoned on conviction of plotting to fix lower league English matches, with another footballer (who has played in the English Premier League) awaiting trial.²⁹

The Explanatory Report on the Convention rationalises the requirement for an international treaty³⁰

“The manipulation of sports competitions poses a challenge to the rule of law because it is linked to fraud, organized crime and corruption”.

¹³ See Veuthey (2014) for further discussion.

¹⁴ Husting et al. (2012), p. 12.

¹⁵ Vidal et al. (2014); sect. 1 provides a breakdown across continents and sports.

¹⁶ Vidal et al. (2014), sect. 1 and Veuthey (2014), Carpenter (2012), Serby (2012).

¹⁷ See for example Anderson et al. (2014) where tennis was chosen as a case study.

¹⁸ Forest (2008), p. 7.

¹⁹ See the Court of Arbitration for Sport hearing in CAS 2011/A/2621 David Savic v Professional Tennis Integrity Officers.

²⁰ Hanse Cronje (South Africa), Mohammad Azharuddin (India), Saleem Malik and Salman Butt (Pakistan), Mohammad Ashraful (Bangladesh); for further details see Serby (2012).

²¹ Including darts, ice hockey, table tennis, volleyball and squash; see ESSA Integrity report (2014).

²² See <http://www.theguardian.com/sport/2013/sep/25/stephen-lee-match-fixing-guilty>.

²³ Anderson et al. (2014), p. 10.

²⁴ See Larsen (2014).

²⁵ See Husting et al. (2012), p. 11 for a list of recent scandals.

²⁶ See <http://www.theguardian.com/football/video/2013/feb/19/football-match-sportsradar-video>.

²⁷ See BBC website <http://www.bbc.co.uk/sport/0/football/29371824>.

²⁸ See Carpenter (2012), p. 4.

²⁹ See Keegan (2014).

³⁰ Para 6.

Not only has match-fixing permeated many sports at different levels across various parts of the world, but also evidence has emerged of its links with organised crime. Interpol's Operation Soga is an investigation into, and enforcement programme against, the illegal football-related gambling activities of criminal organisations in Asia which as of 2013 had resulted in 2360 raids and the closure of gambling operations which had handled illegal bets of a value in excess of \$2 billion and the seizure of more than \$27 million.³¹ In response to the rise in match-fixing Interpol now has a dedicated crime area "Integrity in Sport", involving investigations in more than 60 countries over the past 2 years.³² In September 2014, it was reported that the Interpol/Fifa investigations had unearthed "a rapid increase in reports of alleged match-fixing" around the globe "being driven by professional criminals, exploiting betting markets, whether they are legal or illegal".³³

Speaking at an international conference in September 2014 John Abbot, head of the Interpol/Fifa initiative against match-fixing said

"We have evidence of organised crime groups in China, Russia, the Balkans, the United States and Italy making substantial money....Sports governing bodies and football associations need to get real about prevention. Many sports, of course, are affected by match-fixing, but football, the global game, is top of the league and cricket is second".³⁴

In the light of the growing epidemic of match-fixing and its links to international organised crime, the requirement for an international treaty became pressing.

4 The Council of Europe and the Convention on Manipulation of Sports Competitions

The Council of Europe through its 47 member countries (which includes all 28 EU member states) promotes international cooperation particularly in relation to the areas of sport, culture and human rights. The Council has engaged in European sport previously having passed the Convention on Spectator Violence³⁵ shortly after the Heysel stadium tragedy in relation to controlling crowd disturbance at major football events. A few years later in

1989 the Council's Anti-Doping Convention,³⁶ was the first international legal instrument on doping in sport, and it has been ratified by 51 states in Europe and beyond, including Australia, Canada, Morocco and Tunisia. Ultimately, the impact of the anti-doping Convention has been considerably less than that of both the World Anti-Doping Agency ("WADA")³⁷ and the International Convention against Doping in Sport³⁸ adopted at the UNESCO General Conference in October 2005.

As Parrish has observed in relation to the European region (endorsing Nafziger)

"the origins, growth and institutional leadership of modern sports law lie there ...[it has] dominated international sports organisation, leadership and competition".³⁹

The institutions of the European Union have taken an increasing interest in sport, in particular corruption, and have promoted the involvement of the Council of Europe in the issue. In 2011 the European Commission concluded that because corruption is carried out by international criminal groups, the issue "*goes beyond the remit of national authorities*", making it an appropriate matter for the Council of Europe, with whom the Commission declared it would work in

"analysing the factors that could contribute to more effectively addressing the issue of match fixing at national, European, and international level".⁴⁰

Both the EU Ministers for Sport (in September 2012) and the European Parliament (in 2013) have publicly reflected on the serious threat to sport match-fixing represents and have called for more preventive action in the form of education, monitoring and sanctions to be accompanied by greater international cooperation between gambling regulators, prosecuting authorities, sports governing bodies, to include cooperation with non-EU states through the Council of Europe.⁴¹

In 2006 European Ministers gave impetus to the role of the Council of Europe in sport by the establishment of an Enlarged Partial Agreement on Sport ("EPAS"),⁴² a platform for pan European intergovernmental cooperation on

³¹ See <http://www.interpol.int/Crime-areas/Integrity-in-Sport/Integrity-in-sport/Overview>. Accessed 2 Oct 2014.

³² See <http://www.interpol.int/>.

³³ See n 31 supra.

³⁴ See Keegan (2014) and Match-fixing A Global problem Warn Experts, fcbusiness. <http://www.fcbusiness.co.uk/news/article/newsitem=3406/title=match-fixing+a+global+problem+warn+experts>.

³⁵ In 1985 after 41 were killed in the disturbances during a European Cup game at the Heysel stadium.

³⁶ See http://www.coe.int/t/dg4/sport/doping/convention_en.asp.

³⁷ Established as a private foundation under Swiss law in November 1999, with an equal number of representatives from the Olympic Movement and of the governments from all five continents.

³⁸ See <http://www.wada-ama.org>.

³⁹ Parrish (2012).

⁴⁰ European Commission (2011).

⁴¹ See European Commission Declaration (2012) and European Parliament (2013).

⁴² See http://www.coe.int/t/DG4/EPAS/default_en.asp.

better governance in sports, contributed to by sports federations and non-governmental organisations.

As early as 2008, the 11th Council of Europe Conference of Sports Ministers concluded with a Resolution on Ethics in Sports which included a reference to the issue of match-fixing, corruption and illegal betting; and this eventually led to the adoption in September 2011 of the Council of Europe Recommendation⁴³ on the promotion of the integrity of sport against manipulation of results. The Recommendation called for governments to review their existing legislation to ensure it contains appropriate sanctions for match-fixing, and to work with sports governing bodies and sports organisations to exchange information on, and if necessary, prosecute, match-fixing. The Recommendation also called on EPAS to conduct a feasibility study on a possible international Convention on match-fixing. In due course, after completion of the various stages involved in the Council of Europe's legislative process which included consultation with a number of key stakeholders, this finally led in July 2014 to the Convention on the Manipulation of Sports Competitions being adopted by the Council of Europe Committee of Ministers, with the Convention being signed by the first fifteen member states (including Russia and Germany, as well as six other EU Member States, Bulgaria, Denmark, Finland, Greece, Lithuania and Netherlands) on 18th September 2014.

The aim of the Convention is to increase cooperation both nationally and internationally between governments, regulators, betting operators, sports bodies and prosecutors to combat match-fixing. The Convention is intended to have global reach and in the course of negotiations countries as diverse as Australia, New Zealand, Canada, Japan and Morocco were consulted and it is hoped they will sign the Convention.⁴⁴

The Convention is arranged into chapters. **Chapter I** sets out the Convention's 'Purpose, guiding principles, definitions'. The purpose of the Convention (Article 2) is to help

“a) to prevent, detect and sanction national or transnational manipulation of national and international sports competitions; b) to promote national and international co-operation against manipulation of sports competitions between the public authorities concerned, as well as with organisations involved in sports and in sports betting”.

Important definitions in this chapter include the 'Manipulation of sports competitions' which is given a broad

definition, as discussed above, and Article 3 (5)(a) which defines “*illegal sports betting*” as

“all sports betting activity whose type or operator is not allowed under the applicable law of the jurisdiction where the consumer is located”.

This broad definition of “*illegal sports betting*” is problematical, and has been the subject already of a complaint by Malta to the Court of Justice of the European Union (“CJEU”), which is considered below.

Chapter II of the Convention contains the articles on ‘*Prevention, co-operation and other measures*’.

An interesting provision in the Convention, aimed at reducing corruption of referees is that under Article 7(2)(e) governments should procure sports bodies appoint officials such as referees “*at the latest possible stage*”.

Another welcome provision in the Convention is under Article 7(2)(c) which requires that governments should procure sports bodies provide “*adequate protection for whistle blowers*”.

Article 11 imposes an obligation on governments to ‘explore the most appropriate means to fight operators of illegal sports betting’ and to ‘consider’ adopting measures such as “restriction of access to illegal remote sports betting operators [website blocking⁴⁵], and closure of illegal land-based sports betting operators” and “blocking financial flows between illegal sports betting operators and consumers” as well as advertising bans.

An early indication that obtaining international cooperation on the Convention will not be easy is Malta's complaint under Article 218 of the Treaty on the Functioning of the EU (“TFEU”).⁴⁶ Under the provisions of Chapter II, a betting operator licenced in, say Malta, could be prohibited from going about its business in another EU state, say Poland, if Polish law proscribes some of the betting methods which in Malta are perfectly legal; thereby constituting a classic impediment to the EU internal market. In Poland gambling is legal, but is relatively highly taxed; however, unusually for the EU, online gambling is illegal. In practice blocking of foreign websites is not enforced and many Poles therefore work round this restriction on online gambling. In Malta, on the other hand, betting

⁴⁵ See Vidal et al. (2014), sect. 13 for a discussion recent EU law cases on blocking; Cases C-70/10, 24 November 2011 and C-360/10, 16 February 2012. “In the first case, the CJEU held that a member State could not order an internet access provider to establish a filtering system of all electronic communications, applied indiscriminately to all its clients, as a preventive measure and at its own expense, without a time limitation, to prevent violations of an intellectual property right. The second case of 16 February 2012 confirmed the decision of 24 November 2011”.

⁴⁶ A special jurisdiction allowing the Court of Justice of the European Union (“CJEU”) to rule if an envisaged treaty (ie not in force for the EU yet) is compatible with EU law or not.

⁴³ See Council of Europe (2011).

⁴⁴ See <http://playthegame.org/news/news-articles/2014/european-ministers-agree-on-convention-against-match-fixing-and-illegal-betting/>.

operators (including online operators) are highly prized as economic entities and both regulation and tax are very light on betting companies in order to stimulate an important part of the economy for this, the smallest EU member state. Malta's complaint to the European Court is that the definition of "illegal betting" (see above) is discriminatory under TFEU Article 18, and unlawful under Articles 49 (freedom of establishment) and 56 (freedom to provide services); and it is expected that Malta will argue before the Court that while they accept that the regulation on illegal gambling is in pursuit of a justifiable public policy aim (the eradication of match-fixing), attacking gambling which is licenced in one EU State but not another, is not a proportionate means of achieving the aim given the evidence that unlicensed as opposed to licenced gambling is primarily the source of match-fixing.

Not unreasonably the Maltese argues that the Convention exceeds the ambit of EU competence by introducing regulations on gambling which is not a settled matter in the EU. The Commission's 2012 Communication "*Towards a comprehensive European framework for online gambling*"⁴⁷ refers to the rulings from the CJEU (in particular under TFEU Article 56) allowing for member states, on the basis of public interest objectives, to restrict provision of online gambling services even where they are regulated in another member state; these public interest objectives include the prevention of crime. However, that discretion is not unlimited, and there are circumstances in which gambling regulation can constitute a disproportionate restriction of internal market rights. The complex and voluminous case law of the CJEU, most recently reiterated in *Pfleger*⁴⁸ makes clear that Member States have a great deal of discretion to regulate gambling. Moreover, Malta will argue that any unduly restrictive provisions which drive gamblers into the unregulated market are counter-productive, since it is widely acknowledged that it is the unregulated betting market that is the source of much of the match-fixing problem. There are two possible outcomes of this litigation. First of all, if the CJEU rules that the relevant rules in the Convention are incompatible with EU internal market law, neither the EU nor the Member States will be able to ratify it. Secondly, if the Court rules that there is no breach of internal market law, it will probably indicate in detail how to interpret the relevant provisions of the Convention in order to ensure compatibility with EU law. In that case, the opinion of the CJEU will of course inform the manner in which the Convention is implemented in the Member States.

Chapter III deals with '*Exchange of information*' between governments, betting operators and sports bodies,

⁴⁷ European Commission Communication (2012).

⁴⁸ Case C-390/12 [2014] *Pfleger and Others*; See Lycka (2015).

nationally and internationally. Article 12 requires signatory governments to facilitate the exchange of information "*in accordance with its domestic law*". Sharing of information is regulated within the European Union by the European Union Data Protection Directive 1995. In the absence of clearer understanding of this complex law, there is risk aversion when it comes to sharing data. As a result of different implementations of the Data Protection Directive in different EU states, betting operators in countries such as Austria, France and Denmark are reluctant to share information voluntarily.⁴⁹ In Austria only under a Court order will betting operators release information about suspicious betting activities where it comprises personal data.⁵⁰ Currently only certain countries have information sharing agreements between regulators (for example, the UK, Spain and Italy).⁵¹ It is hoped that the Convention might overcome these difficulties. No doubt this aspect will form part of the implementation work of the follow-up committee referred to at Chapter VIII of the Convention. Work is continuing on a new EU Directive dealing with processing personal data by 'competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences'.⁵² In due course therefore the legality of exchanging data in relation to match-fixing, a criminal offence in most countries as discussed below, will be more clear-cut.

Article 13 of the Convention requires each state to identify a 'national platform' to act as a coordinator of the fight against match-fixing by serving as 'an information hub', sharing information on match-fixing with, and receiving information from, sports bodies, public authorities and betting operators within the state as well as other states' national platforms. Since most national regulatory authorities only have as their secondary objective combating the risk of match-fixing (with the notable exceptions of France, Italy and Australia) this provision can potentially have a major impact.

Chapter IV is headed '*Substantive criminal law and co-operation with regard to enforcement*'.

"Each Party shall ensure that its domestic laws enable to criminally sanction manipulation of sports competitions when it involves either coercive, corrupt or fraudulent practices, as defined by its domestic law". (Article 15)

This article stops short of requiring states to introduce into their criminal law a sport-specific betting-related fixing offence. The extent to which it is necessary, or even

⁴⁹ Olfers et al. (2014), p. 33.

⁵⁰ Ibid p 34.

⁵¹ Ibid p 34.

⁵² See European Commission (2012).

desirable, to introduce new sport-specific match-fixing legislation, either through European Union law or through new individual state law is considered in more detail below.

Article 16 requires states to create a specific criminal offence of money laundering connected to match-fixing. This reflects the knowledge that match-fixing, organised transnational crime and money laundering feed off one another (as evidenced by the results of Interpol's investigations referred to above). It has been estimated that \$140 billion is laundered annually through sports betting; i.e. 10 % of the revenue worldwide of organised crime.⁵³

Article 18 requires states to ensure the imposition of legal liability on corporations where match-fixing or money laundering offences have occurred through the acts of natural persons acting for the benefit of the corporate body.⁵⁴

Chapter V deals with '*Jurisdiction, criminal procedure and enforcement measures*'. Article 21 requires states to consider adopting legal measures to provide protection for those who provide information on match-fixing, or assist investigations and give evidence. This provision is to be welcomed in the light of the knowledge that organised crime is involved in match-fixing.

Chapter VI deals with sanctions. The Convention does not unfortunately envisage civil forfeiture of the proceeds of match-fixing. This is an enforcement measure not sufficiently considered by the authorities given the difficulty in obtaining a criminal conviction for match-fixing.⁵⁵

Chapter VIII establishes a Follow-up committee for further international cooperation in the Convention's implementation.

The Convention does not deal with how the national platform or regulator, or fighting match-fixing generally, is to be funded, other than stating at Article 8.2:

"Each Party shall consider the possibility of helping sports organisations to combat the manipulation of sports competitions, including by funding appropriate mechanisms".

In relation to the financing of regulators the Commission's 2012 Communication "*Towards a comprehensive European framework for online gambling*" reports that EU Member States have a variety of approaches none of which appears to be more or less efficient. One funding scenario is

the French law (a similar version of which operates in Hungary, as well as in Australia and New Zealand) under which betting operators, as a condition for offering bets on sports competitions, must pay compensation in return for the commercial use of the sports organiser's events. The European Parliament in 2011⁵⁶ called for the recognition of property rights of sports events organisers to secure a financial return to help fund the fight against match-fixing. Unsurprisingly many gambling operators oppose the introduction of such a law, arguing that "*a sports betting right is neither a justified nor an efficient integrity mechanism*"⁵⁷ given the evidence that the unregulated gambling sector is the source of the problem. Convention articles 8.3 and 8.4 recommend governments **withholding** funding from sports organisations not engaging in fighting match-fixing or which are affected by match-fixing, as is the case already in for example Australia.⁵⁸

5 Prosecution of match-fixing as a criminal offence (Convention Chapter IV); are sport-specific match-fixing laws required?

Article 15 (Chapter IV) of the Convention requires that each state shall ensure that there are criminal sanctions for manipulation of sports competitions where coercion, corruption or fraud are present. Because match-fixing is a relatively recent phenomenon, globally there is no common legislative approach to the criminalisation of match-fixing. This lack of a universal approach to the criminalisation of betting-related sports corruption reflects that sport, and the criminal law, remains matters that sports bodies and individual states, respectively, retain competence for. The joint International Olympic Committee and United Nations Office on Drugs and Crime 2013 study "*Criminalization approaches to combat match-fixing and illegal/irregular betting: a global perspective*"⁵⁹ concluded that

"the current lack of uniformity in criminal measures and legislative approaches calls for more streamlined action to develop standard-setting model instruments and to facilitate convergence in criminal justice responses".

A detailed investigation⁶⁰ into the national criminal laws of EU member states and the extent to which they

⁵³ Vidal et al. (2014), sect. 4.

⁵⁴ Carpenter (2014b) has argued this might impose liability on sports clubs for match-fixing; but this could only be the case where the club is a corporate entity or other form of legal person and more importantly where they have actually benefited from the match-fixing, and this is seldom likely to be the case.

⁵⁵ See Serby (2013) for a fuller discussion of civil forfeiture orders as a possible alternative means of fighting match-fixing.

⁵⁶ European Parliament (2011).

⁵⁷ Mike O'Cane, Chairman of the European Sports Security Association, in *World Sports Law Report* (2014, June).

⁵⁸ See Carpenter (2014a).

⁵⁹ See http://www.unodc.org/documents/corruption/Publications/2013/Criminalization_approaches_to_combat_match-fixing.pdf.

⁶⁰ See Husting et al. (2012).

effectively criminalise and deal with match-fixing was commissioned by the European Commission and published in 2012.⁶¹ The study reported that there was a patchwork of different provisions under which match-fixing offences could be prosecuted ranging from general dishonesty offences (such as conspiracy, corruption, fraud and money laundering) found either in common law or criminal codes, to specific betting at sport-related provisions (but only in a minority of countries: Bulgaria, Cyprus, France, Greece, Italy, Malta, Poland, Portugal and Spain). The Report concluded that while all states had in place criminal law which allowed for successful prosecution for manipulation of sports results, loopholes existed; such as for example the difficulty in using corruption provisions in the context of non-professional sport, where the bribed person is required to hold a manager or employee status. In some states, for example Spain and Italy, legislators have introduced a specific sport betting-related corruption offence in light of the difficulty in bringing match-fixing within fraud offences,⁶² but the Spanish offence of sports fraud has been criticised as pertaining only to the manipulation of the final result. Although there are obvious advantages in introducing sport-specific corruption offences, many Member State representatives who took part in the study were not in favour of implementing a sport-specific offence at national or European level.

Conversely the report found that most sports governing bodies (including FIFA and UEFA) and the European Parliament would support the creation of a sport-specific match-fixing offence.⁶³ This is theoretically possible as under the Lisbon Treaty, the EU has an increased competence in relation to criminal law and harmonisation is provided for under TFEU Article 83 which makes possible action by the Parliament and Council by way of directives to establish minimum rules concerning definition of certain offences in “*areas of particularly serious crime with a cross-border dimension...*”. Article 83 lists nine specific areas which include corruption (and money laundering). The Lisbon treaty is also the first European treaty to formally recognise sport as an area in which the EU has competence. Under the TFEU Article 6, the Union can carry out actions to support the actions of the member states in the field of sport. However, TFEU Article 165 recognises the limited competence of the Union in sport, with the EU institutions’ role being “*the [adoption] of incentive measures, excluding any harmonisation of the laws*”,⁶⁴ Union action is to comprise

“*developing the European dimension in sport, by promoting fairness and openness in sporting competitions*”.⁶⁵ As match-fixing is the antithesis of “*fairness and openness*”, combatting match-fixing has now come firmly within the competence of EU action.⁶⁶ The European Parliament⁶⁷ has called for

“*Member States to take all necessary action to prevent and punish illegal activities affecting the integrity of sport and making such activities a criminal offence*” and called “*on the European Commissions to tackle (...) match-fixing, as announced in its EU anti-corruption strategy, by establishing minimum rules concerning the definition of criminal offences in this field*”.

However, for the reasons outlined above, adoption of harmonised EU legislation in relation to the criminalization of match-fixing appears unlikely.⁶⁸

Husting et al. assert that “*the existence of a specific sport offence does not necessarily lead to more judicial decisions or to fewer suspicious cases*”.⁶⁹ They conclude that the willingness to act of the authorities (prosecutors or sports bodies) is more determinative of successful investigation and conviction in the criminal courts, but concede that the absence of a sport-specific offence may be a dissuasive factor in bringing a police investigation, and note that maximum penalties vary enormously throughout Europe; for corruption offences from 2 years in Finland to 15 years in Romania, for fraud from 2 years in Slovakia to 13 in Latvia; and for sport-specific offences from 6 months in Greece to 8 years in Bulgaria.⁷⁰

⁶⁵ TFEU Article 165(2).

⁶⁶ By the time of the 2011 Commission Communication “*Developing the European Dimension in Sport*”, see European Commission (2011), match-fixing had moved up the agenda and acquired its own section, 4.5 “*Integrity of Sporting Competitions*”, where the Communication refers to match-fixing as a form of corruption that threatens sport’s integrity and “*as such [is] sanctioned by national criminal law*”.

⁶⁷ European Parliament (2012), para 24.

⁶⁸ EU institutions will continue to play an active role in combating match-fixing. The Council Resolution 2011/C 162/01 EU Work plan for sport 2011-2014 promotes “*integrity of sport, in particular the fight against doping, match-fixing and the promotion of good governance*” as one of three priority themes (alongside the social values of sport (ie health and education) and sustainable grassroots funding); as does the WorkPlan for Sport 2014-17, which refers to an Expert Group on Match-Fixing and foresees a possible Commission Recommendation on best practices in the prevention and combatting of betting-related match-fixing, with a report anticipated for the first half of 2016.

⁶⁹ See Kos et al. (2013), p. 300 for the opposite view, that a new match-fixing offence should be created.

⁷⁰ Husting et al. (2012), p. 44.

⁶¹ Kos et al. (2013).

⁶² See Husting et al. (2012), p. 43.

⁶³ See Husting et al. (2012), p. 16.

⁶⁴ TFEU Article 165(4).

Criminal convictions for match-fixing are relatively rare, but the successful prosecution in the English courts of match-fixers demonstrates the malleability of the existing criminal law and suggests that it is not necessary to create sport-specific offences, of more importance is the willingness to prosecute on behalf of the public authorities. The most recent criminal prosecutions for match-fixing in England (further to an investigation started by ‘The Daily Telegraph’ newspaper) were in June 2014. Three individuals (one a footballer, Michael Boateng, the other two Singaporean businessmen) were convicted of conspiracy to commit bribery in relation to League Two football matches in England and received prison sentences of 16 months, 5 years and 5 years, respectively.⁷¹ The first English professional cricketer to be jailed for match-fixing in England was Mervyn Westfield who was convicted in 2011 of deliberately under performing (bowling “*in a manner calculated and intended to allow the scoring of runs*”).⁷² It is notable that Westfield was convicted of a different offence to Boateng, namely accepting or obtaining corrupt payments contrary to s.1 (1) of the Prevention of Corruption Act 1906, even though in essence the facts of the cases are similar (though in different sports) as both cases are straightforward cases of spot-fixing. Westfield unsuccessfully appealed his conviction to the Court of Appeal, which heard at the same time the appeal of Majeed, the sports agent convicted along side his clients the three international Pakistani cricketers Butt, Amir and Asif who were sentenced to jail terms for their involvement in match-fixing in the infamous 2010 international match involving England and Pakistan. The convictions of the Pakistanis were for both conspiracy to accept corrupt payments (under the Prevention of Corruption Act) and a different offence again, namely conspiracy to cheat (under s 42 of the Gambling Act 2005).

Therefore, in three different cases Boateng (football), Westfield (cricket) and Majeed, Butt, Amir and Asif (also cricket), all of which involved spot-fixing and accepting money for under performing, the criminal convictions comprised variously conspiracy to accept bribes (under sections 1 and 2 of the Bribery Act 2010); conspiracy to accept corrupt payments (under the Prevention of Corruption Act 1906) and conspiracy to cheat at gambling (under the Gambling Act 2005); none of these being a sport-specific betting-related fixing offence.

Judgment was given by the Lord Chief Justice of England and Wales, Lord Judge in the Court of Appeal in 2011 on Amir and Butt’s unsuccessful appeal against the length of their sentences (6 and 30 months,

respectively). The Lord Chief Justice’s words indicate the seriousness with which the judiciary in England view match-fixing

“The criminality was that these three cricketers betrayed their team, betrayed the country which they had the honour to represent, betrayed the sport that had given them their distinction, and betrayed the very many followers of the game throughout the world. In exchange for the privilege and advantages of playing Test cricket it was required of them that at all times they should perform honestly and play to the best of their respective abilities – no more, but certainly no less. If for money or any other extraneous reward it cannot be guaranteed that every Test player will play on the day as best he may, the reality is that the enjoyment of many millions of people around the world who watch cricket, whether on the television or at Test Matches, will eventually be destroyed”.⁷³

These words are a succinct rationale for punishing match-fixers through the criminal courts, even in the absence (as in the UK) of a sport-specific match-fixing law,⁷⁴ where there is no consensus on whether to introduce such a law.⁷⁵

Examples from outside the EU of recent laws criminalising match-fixing include Turkey which in 2011 introduced the *Law on Prevention of Violence and Disorder in Sports*, with the introduction in 2014 of new intelligence sharing “sports security units” between clubs, municipalities and police, and prison sentences of between 5 and 12 years for match-fixers.⁷⁶ In February 2015, the Indian government finalised the *Prevention of Sports Fraud Bill* which will introduce a criminal offence of match-fixing through manipulation of results, spot-fixing and wilful under performance, punishable with up to 5 years in prison.⁷⁷ In 2011 in Australia various governments signed a national policy on match-fixing representing a commitment by Commonwealth, State and Territory governments to enact new laws on match-fixing sanctioned by lengthy

⁷³ Amir and Butt (2011) EWCA Crim 2914.

⁷⁴ The Gambling Act 2005 and its section 42, ‘cheating at gambling’, does not cover match-fixing and as shown above has fallen out of favour with prosecutors in framing criminal charges against match-fixers.

⁷⁵ See for example Carpenter (2015) who argues in favour of a sport-specific corruption law. This article also discusses the failure to amend the Gambling Act 2005 to increase the sentence for corruption in sport offences.

⁷⁶ See further discussion in World Sports Law Report (2014, August).

⁷⁷ <http://www.lawinsport.com>. Accessed 18 Feb 2015; See also Sekhri (2014).

⁷¹ See <http://www.nationalcrimeagency.gov.uk/news/news-listings/436-football-match-fixing-charge>.

⁷² See Majeed and Westfield (2012) EWCA Crim 1186.

prison terms.⁷⁸ Conversely, some countries have adapted existing legislation, as for example in New Zealand where in May 2014 the Sports Minister introduced *The Crimes (Match-fixing) Amendment Bill*⁷⁹ seeking to amend section 240 of the *Crimes Act 1961* in time for the Cricket World Cup taking place in Australia and New Zealand in February 2015.

6 The role of betting operators in combatting match-fixing under the Convention; the changing nature of sports betting markets

The worldwide growth of match-fixing reflects the huge increase in gambling on sports which have been partly caused by the growth in the different types of bet that can now be placed; for example, ‘spread-betting’ (where the pay-off is based on the accuracy of the wager, rather than simply win/lose), and so-called ‘in-running’ or ‘live’ betting whereby bets can be placed during a match on its outcome and odds fluctuate depending on the state of the match. It has been estimated that live betting now makes up 70 % of many operators’ bets,⁸⁰ and it requires an escalating resource for betting operators to monitor live betting. Licenced betting operators argue that restricting their use of ‘high risk’ markets such as ‘live betting’ will not help combat match-fixing, as it will only push corrupters towards the unregulated markets, and that in any event the corrupters prefer to manipulate more mainstream markets with higher liquidity.⁸¹

The fact that betting is illegal in many parts of the world means that much of the sports betting market is unregulated, so estimating its likely total value is not easy, but it is thought to be worth between £435 and £625 billion annually, an estimated 70 % of which derives from football.⁸²

Much of the growth in the sports betting market has occurred in the online sector. The Commission’s 2012 Communication “*Towards a comprehensive European framework for online gambling*”⁸³ proposed adopting a

⁷⁸ See <http://www.health.gov.au/internet/main/publishing.nsf/Content/national-policy-on-match-fixing-in-sport> which led to *The Crimes Amendment (Integrity in Sports) Act 2013* which inserted a new subpart headed “Cheating at Gambling” into *Crimes Act 1958 (Vic)* and a maximum 10 years imprisonment followed by virtually identical provisions in New South Wales, South Australia, Australian Capital Territory and the Northern Territory. See further discussion in Carpenter (2014a).

⁷⁹ Making match-fixing in relation to all sports a form of obtaining by deception. The offence largely follows the classic definition of fixing, and refers to manipulating other than for tactical or sporting reasons.

⁸⁰ Vidal et al. (2014), sect. 4.

⁸¹ See ESSA Integrity Report 2014.

⁸² Keogh and Rose (2013).

Recommendation on best practices in preventing and combating betting-related match-fixing and concludes that

“*there is a clear need for more cooperation between betting operators, sport bodies and competent authorities including gambling regulators, both at national and international level*”.

The Communication called for ‘national contact points’ to be created to bring together the work done by the different stakeholders. This language clearly prefigures the language in the Convention of ‘national platforms’. The Court of Justice of the European Union has also recognised the risk of match-fixing posed by online gambling.⁸⁴

Chapter III of the Convention, “*Exchange of Information*”, requires betting operators to provide information on match-fixing to ‘national platforms’. Gambling operators already work closely with sports governing bodies and national regulators to put in place monitoring systems to check for suspicious betting patterns as a possible indication of match-fixing. A betting pattern is defined as irregular

“when it involves unexpected activity with atypical bet sizes or volumes that continue even after significant price corrections have been implemented to deter such market activity”.⁸⁵

UEFA, for example, has worked with betting operators to institute a Betting Fraud Detection System, ‘BFDS’.⁸⁶ The IOC together with Interpol set up the International Sports Monitoring GmbH in 2009 to monitor betting activities during the Olympic games and the gambling operator Betfair exchanged data with the IOC with regard to irregular betting patterns at the 2012 Olympics. ESSA, a grouping of some of the largest licenced online and offline betting operators,⁸⁷ gathers intelligence on any suspicious betting patterns and reports them to both regulators and sporting authorities including FIFA, the IOC, the Tennis Integrity Unit and the UK Gambling Commission. In its latest report⁸⁸ ESSA cited its members reporting in 2013 148 unusual betting patterns, of which 30 were found to be suspicious and were reported to regulators and sports

⁸³ See European Commission Communication (2012) at 2.5 which deals with ‘Safeguarding the integrity of sports and preventing match-fixing’.

⁸⁴ Case C-42/07, *Liga Portuguesa de Futebol Profissional & Bwin*, ECR 2009, 7633, para. 63.

⁸⁵ See ESSA Integrity Report 2014; and for a detailed discussion of what constitutes suspicious betting patterns see Olfers et al. (2014), pp. 26 ff.

⁸⁶ For more details see Husting et al. (2012), p. 14.

⁸⁷ See website <http://www.eu-ssa.org>.

⁸⁸ See ESSA Integrity Report 2014.

governing bodies. The Remote Gambling Association (“RGA”) also supports the aims of the Convention in regard to cooperation between its members and sports governing bodies (it already has memoranda of understanding with UEFA and FIFA) and national and international statutory authorities such as the British Gambling Commission’s Sports Betting Intelligence Unit.

Even in those states where there is no legal requirement to provide a regulator with suspicious betting patterns, betting operators still use surveillance systems to monitor betting levels at market as well as customer level to establish their exposure to certain outcome and price movements. This “Know Your Customer” approach produces a better experience for customers and more importantly helps avoid losses.

To a great extent, therefore, the requirement under Chapter III for betting operators to assist regulators and sport-governing bodies in detecting match-fixing simply reflects what already happens. However, as Anderson et al. note

“greater consistency and transparency of the criteria used in the betting monitoring industry as to the identification of “irregular” betting patterns which trigger an obligation to report to the relevant sports body would assist greatly in safeguarding against match fixing is clearly a necessary and pressing need”⁸⁹.

Besides, sports betting monitoring systems are not a panacea, because criminals can work around them. Sophisticated alerts systems like UEFA’s BFDS cannot access market volumes, and specifically the identity, geographical provenance or even the wager amount; they simply rely on the odds variations.⁹⁰

Match-fixing presents a commercial threat to betting operators as potentially betting on sport could diminish if there is a perception that matches are fixed; this has happened already in certain Asian markets (as discussed below). It is not just through monitoring systems whose results are shared with regulators and sporting bodies that betting operators work with other stakeholders. The ‘Code of Conduct on Sports Betting for Athletes’, is a joint creation of EU Athletes, European Gaming and Betting Association, Remote Gambling Association and European Sports Security Association. The Code seeks to create a complete education system for athletes tailored to their sport and country.

In summary therefore, the Convention seeks to encourage the monitoring of betting markets by betting operators with a view to detecting unusual betting patterns which

could be an indication of match-fixing. Under the Convention, operators will pass information to one entity, the ‘national platform’, instead of as currently happens to whichever sporting body that operator happens to have an agreement with; this should make for a more efficient system.

7 Sports governing bodies: their obligations under the Convention

The preamble to the Convention states that it is the responsibility of sports organisations

“to detect and sanction... manipulation of sports competitions committed by persons under their authority”

but notes that under the

“principle of the autonomy of sport... sports organisations are responsible for sport and have self-regulatory and disciplinary responsibilities in the fight against manipulation of sports competitions”.

The Convention therefore recognises the autonomy of self-governing sports bodies, but overall the effect of the Convention is to further reduce this autonomy through increased intervention by state actors (discussed further at part VII below).

There are various reasons why sports governing bodies should take action against match-fixing. On the one hand, there is the commercial imperative, as evidenced by the collapse of football in parts of Asia⁹¹ as a result of disenchantment from the public and commercial supporters after multiple match-fixing scandals. In addition, now that there is evidence of match-fixing’s relationship with organised crime and money laundering, there is also a public order issue. As considered above, the Explanatory Report on the Convention states⁹²:

“The manipulation of sports competitions poses a challenge to the rule of law because it is linked to fraud, organized crime and corruption”.

The major steps sporting organisations have already taken to combat match-fixing are (i) the setting up Integrity Units to investigate and report on suspicious behaviour, (ii) educational programmes alerting athletes to the dangers of match-fixing and (iii) amending their Codes of ethics to

⁸⁹ Anderson et al. (2014), p. 2.

⁹⁰ Vidal et al. (2014), sect. 12.

⁹¹ Hill (2010). See also Menary (2014) the report in September 2014 from the Hong Kong Football association into the ongoing problems with fixing in football and the resulting threat to its commercial viability.

⁹² Para 6.

make engaging in match-fixing a disciplinary offence. The Convention largely reflects these existing measures, and does not introduce any novel or significant extra measures, but seeks to shift some responsibility onto governments to ensure that these measures are more effective in **all** sports and at **all** levels.

At Article 7.2(a) of the Convention sports organisations are to be ‘*encouraged*’ by governments to carry out “*enhanced and effective monitoring of the course of sports competitions exposed to the risks of manipulation*”.

Many sports have already proactively implemented procedures to investigate match-fixing in their own sport. Cricket, run globally by the International Cricket Council (“ICC”), was the first sport⁹³ to set up an integrity unit in 2000 in the wake of the Cronje scandal which led to a life ban not only for the South African captain but also the captains of India and Pakistan, Mohammed Azharuddin and Salim Malik. This is now known (since 2003) as the Anti Corruption and Security Unit (“ACSU”). The ICC’s website makes it clear that the ACSU works with

“*international network of contacts in both the legal and **illegal** markets so that where concerns are raised, the Unit is able to activate these relationships and effectively investigate allegations*”. (emphases added)

The Chairman of the Unit is Sir Ronnie Flanagan, formerly Chief Constable of the Police Service of Northern Ireland.

A similar ‘integrity unit’ is provided for by the body that administers international football, FIFA, which introduced a 10-year partnership programme commencing 2011 with Interpol targeting match-fixing. This has resulted in the Match-Fixing Task Force, a specialist international network of investigators aiming to combat organised criminal groups operating across national borders.

Although the concept of the autonomy of sports bodies is recognised under the Convention, arguably the Convention undermines this concept as it calls for increased intervention by states in the work done to date by sports governing bodies as private actors. Under the Convention at Article 5.1, sports organisations should work with national governments to “*identify, analyse and evaluate the risks associated with the manipulation of sports competitions*”.

Another example of decreased autonomy for sport-governing bodies is the more interventionist role envisaged for states in the field of athlete anti-corruption educational programmes. Under Article 6 of the Convention, signatory countries are to take responsibility for

“*[encouraging] awareness raising, education, training and research to strengthen the fight against manipulation of sports competitions*”.

This is repeated at Article 7.2(c) under which states are to encourage sports organisations in ‘*education, training and the dissemination of information*’ in particular in the case “*young athletes*”.

Many sport-governing bodies have already introduced educational programmes to warn athletes involved in their sport of the dangers of match-fixing. English first class cricketers, for example, now have to confirm participation at the start of each season in a series of online tutorials about match-fixing before they can play.⁹⁴ As discussed elsewhere football, tennis, athletics and other sports also already have education programmes aimed at warning participants in their sports of the dangers of match-fixing. It has been even suggested that profiles of players could be maintained in order to identify those most at risk, and in need of additional educational help.⁹⁵ This would include for example individuals more likely to have financial insecurity, for example gambling-related debts. Anderson criticises some of the international sports federations for failing to have a robust educational programme, and says the national federations could play a bigger role as preventing corruption depends partly on catching participants at an early stage in their careers.⁹⁶

In relation to the third step that sports federations have already implemented to combat match-fixing, the use of anti-match-fixing Codes of Ethics and disciplinary sanctions, Article 7.3 of the Convention requires governments to ensure sports organisations provide properly in their regulations for “*dissuasive disciplinary sanctions*” in relation to match-fixing. This provision is most welcome, since while many international federations have amended their Codes of Ethics to incorporate specific rules on match-fixing,⁹⁷ individual national federations have a patchwork of self-regulatory provisions in relation to match-fixing. Anderson et al. report that national Sports Governing bodies bear the brunt of the enforcement process,⁹⁸ and conclude that while

“some federations have developed powerful normative frameworks and institutional mechanisms to

⁹³ Husting et al. (2012), p. 15.

⁹⁴ See <http://www.thepca.co.uk/anti-corruption.html> for extracts from the tutorials, and a video recorded of Mervyn Westfield, formerly a first class professional English cricketer, recounting his experiences of being the first professional English cricketer to receive a jail term for match-fixing.

⁹⁵ Anderson et al. (2014), p. 12.

⁹⁶ Anderson et al. (2014), p. 115.

⁹⁷ For example, FIFA Code of Ethics (Article 25).

⁹⁸ Anderson et al. (2014), p. 104.

enforce them, others lack proper rules or proper enforcement and sometimes both”.⁹⁹

An important aspect covered by the Convention is the relationship between non-payment of athletes and the existence of match-fixing. Under Article 7 of the Convention governments are to encourage sports organisations to comply with their contractual obligations (*inter alia* to pay athletes). In 2012 FIFPro (the footballing world players’ union) presented the results of their research into the problems experienced by Eastern European players, and proved a clear link between non-payment of wages and match-fixing, with not <55 % of players approached (11.9 % of the players surveyed had been approached) for match-fixing having not been paid their salary in time.¹⁰⁰ In Greece 31.8 % of players had to wait more than 6 months to receive their salary. Anderson et al. recommend that FIFA and UEFA should use disciplinary measures against federations shown (by, for example, the FIFPro research) to have a poor track record with regard to player payment.¹⁰¹

Where sports clubs run into financial difficulties, they cannot pay athletes. In recent years, there has been a spate of top sports clubs failing financially as a result of over extending themselves; in football UEFA’s Financial Fair Play Regulations, which came fully into effect during the 2013/14 season for clubs taking part in European competitions, are aimed at bringing a measure of financial stability back to football clubs.¹⁰²

Article 7 of the Convention requires governments to encourage sports organisations to adopt rules prohibiting competition stakeholders from betting on sports competitions in which they are involved. Many sporting federations have already done so. The IOC’s Code of Ethics (Articles A5 and A6) state that all forms of

“participation in, or support for betting related to the Olympic Games, and all forms of promotion of betting related to the Olympic games, are prohibited”.

Seven EU Member States have legislated against athletes betting on events in which they are participants.¹⁰³ In other countries, sport-governing bodies have preempted such legislation; for example, the English Football Association in May 2014 introduced a rule with effect from the 2014/15 season that no player in the top eight tiers of English football (essentially the entire professional game) may bet

on any football match (anywhere in the world); previously participants had been banned only from betting in competitions in which their club was involved. For team sports, the easiest means of introducing betting bans is through the contract the athlete has with the club who employs them. In ‘individual’ sports, for example, tennis, players do not have a contractual relationship with a club, so anti-corruption measures are not contained in contractual provisions in the same way as they are in football and other team sports. The International Tennis Federation makes it a condition of membership that national federations and associations apply anti-corruption rules to participants in its competitions. But as pointed out by Anderson et al.¹⁰⁴ not all national federations have yet introduced conflict of interest provisions into their statutes.

No one standard template for investigation into, prevention of and enforcement against match-fixing will suit all sports; and for this reason, sport-governing bodies must retain some autonomy over the anti-corruption programme that best suits their own sport, and this is envisaged in the Convention. The language used in Article 7 of the Convention recognises the traditional ‘sporting autonomy’ in that it requires governments to ‘encourage’ sports organisations to adopt and implement rules to combat match-fixing. The diverse nature of different sports makes it impracticable to apply one set of rules to all sport-governing bodies. Different sports have their own unique features which might act as a contributory factor in increasing the risk of match-fixing. For example, the practice in football for third parties to have an ownership share in footballers has been highlighted as a contributory problem;

*“poor governance relating to the regulation of agents, third party player ownership and private equity investment in clubs may be providing avenues for the grooming of players”.*¹⁰⁵

In September 2014, FIFA announced¹⁰⁶ that it would introduce a global ban on third party ownership of players, although there would be a “transitional period” before the ban came into effect (in South America investment into the game through third party ownership has been a significant source of investment in the sport).

By way of illustration of the different organisational structures of different sports, a comparison can be made between football and tennis. While some aspects of the regulations introduced by the tennis authorities are similar to those in other sports, there are key differences, mainly due to the fact that in tennis the majority of televised matches (i.e. those for which there is a betting market) are

⁹⁹ Anderson et al. (2014), p. 104.

¹⁰⁰ See FIFPro (2012), p. 5.

¹⁰¹ Anderson et al. (2014), p. 105.

¹⁰² For a fuller discussion of the remarkable insolvency rate among the largest European football clubs and UEFA’s Financial Fair Play regulations see Serby (2014).

¹⁰³ See Anderson et al. (2014), pp. 21 ff for further discussion.

¹⁰⁴ Anderson et al. (2014), p. 111.

¹⁰⁵ Anderson et al. (2014), p. 11.

¹⁰⁶ Conway (2014).

under the control of the international tennis federations, the International Tennis Federation (ITF) and the Women's Tennis Association (WTA), not the national federations. The ITF and WTA, together with the Association of Tennis Professionals (ATP) and the Grand Slam Committee (GSC) created in 2008 an independent Tennis Integrity Unit which works alongside a Tennis Anti-Corruption Program, whose terms are incorporated into the ATP Code and Rulebook 2014. The terms include the standard provisions: no betting by participants (this of course includes trainers, umpires etc. alongside players) on tennis competitions, no manipulation, duty to report an approach etc. As usual sanctions include a range of fines and banning periods (up to life conditional on the nature and scale of the offence), and an appeal is possible from a decision of the tennis integrity officer to the Court of Arbitration for Sport in Switzerland.

In conclusion, the Convention seeks to build on the work done to date by some sports like cricket, football and tennis in relation to athlete education, investigation into corruption and new codes of conduct reflecting the significance of match-fixing. The Convention does, however, represent a shift in the relationship between the state and private sports bodies, giving governments a greater supervisory role. Under the Convention it will be easier for governments to withhold funding from sports which do not comply with the requirement for extra vigilance against match-fixing. The following part discusses further the increased role of the state in fighting corruption through the mechanism of 'national regulators'.

8 National regulators: their role under the Convention

National governments, courts and sports governing bodies have traditionally agreed that regulation of sporting matters is best left to the sports federations.¹⁰⁷ For example, the European Commission's 2007 White Paper on Sport¹⁰⁸ was the first time the Commission "addressed sport-related issues in a comprehensive manner".¹⁰⁹ The White Paper acknowledged the recognition in the Nice Declaration of 2000 of the important role sport plays in society, but confirmed the primacy of the role of sporting organisations in the regulation of sport given sport's "specific characteristics".

The threat of match-fixing requires a more extensive role for the state. Article 9 of the Convention requires governments to identify one or more responsible authorities

"entrusted with the implementation of sports betting regulation and with the application of relevant measures to combat the manipulation of sports competitions" (i.e. national regulators).

Under the Convention national regulators, if granted the authority under national law, will have the authority (in consultation with sports bodies) under Article 9.1 to limit the supply of sports betting, even excluding betting altogether from some competitions, such as those designed for youth (under 18) and "where the organisational conditions and/or stakes in sporting terms are inadequate" and (at Article 9.1(f)) to suspend betting where an appropriate alert has been issued. The regulator will have responsibility (at 9.1(d)), for tracing the origin, destination and amount of 'financial flows above a certain threshold'. National regulators are to share information with the national platform as well as betting operators and sports organisations (Article 9.1(a)).

This all represents a considerable regulatory shift away from the current *laissez faire* and *ad hoc* arrangements, and envisages an increased role for the state in the guise of the national regulator. Regulation of gambling is still largely a matter for Member States in the EU. The Commission's 2012 Communication "Towards a comprehensive European framework for online gambling"¹¹⁰ acknowledges that online gambling regulation in particular is characterised by a diversity of regulatory frameworks in the Member States; some states having a monopoly provider, others having a licensing system.

Currently, only ten of the EU 28 Member States place a direct obligation on the national Gambling Authority to proactively gather information on suspicious sports betting activities, while some other states only licence betting operators on condition they act to prevent match-fixing, and report suspicious betting activity to the Gambling Regulator.¹¹¹

In countries where betting is lawful, national regulations differ greatly as to restrictions applied to the types of betting offer allowed. Carpenter (2014a) commends the Australasian approach to state regulation and the suppression of match-fixing. In both Australia and New Zealand, formal agreements exist whereby the sport-governing bodies can control the types of bet (for example, maximum wagers and restrictions on higher risk bets) offered by licensed gambling operators who must provide a financial return to the sports (the so-called "betting right"). In Australia there is a national Integrity of Sport Unit, which enables resources to be pooled across sports in the fight

¹⁰⁷ For a fuller discussion of the autonomy granted to sports federations by states and the courts, see for example Weatherill (2011).

¹⁰⁸ European Commission (2007).

¹⁰⁹ Ibid Introduction.

¹¹⁰ European Commission Communication (2012) (COM/2012/0596 final).

¹¹¹ Olfers et al. (2014), p. 12 ff which provides detailed information in table form at p 14 of the situation in the different member states.

against match-fixing.¹¹² In some states (e.g. Finland and Sweden), the state-controlled operator has a monopoly on offering bets. In France and Italy, the state regulatory authorities (ARJEL and ADM, respectively) have an obligation to process information on suspicious betting activities and they have real-time access to all the transactional data generated by licenced operators.¹¹³ In Italy and France, the national regulator seeks to prevent match-fixing by systematically controlling the types of bets allowed and events that can be bet on; for example, in France, the regulator, ARJEL, has prevented both betting on matches where neither promotion, relegation nor qualification is live, and ‘micro-bets’ (on for example whether there will be a yellow card in a football match or an ace served in a tennis match).¹¹⁴ In Germany, live betting is restricted to the final result.¹¹⁵

Anderson et al. recommend either the UK or French regulatory systems as a template for robust anti-match-fixing strategies.¹¹⁶ The authors of the Oxford report concur that the UK Gambling Commission provides a good model for a national regulator:

“Through working together under the leadership of the Gambling Commission, the parties, especially sport governing bodies and betting operators, have established closer relationships and been able to build a higher level of trust between them than was previously the case”.¹¹⁷

The UK Gambling Commission has a detailed betting integrity decision making framework designed

“to identify the threat and reduce the risks of betting in the UK being corrupted by the manipulation of events or misuse of information”.¹¹⁸

Assisting the Commission with risk assessment, disruption and punishment are the Sporting Betting Intelligence Unit, a unit within the Gambling Commission. Betting operators are required to report suspicious activity to the Commission under their licence¹¹⁹ condition. This reflects the recommendations of the 2010 Parry Report commissioned by the UK government, under which betting regulators have also to share information with sport-governing bodies.¹²⁰ Currently, the Gambling Commission

chooses not to use the power it is afforded to restrict certain bets as it does not believe that such steps are warranted.¹²¹ The UK is currently revising the conditions under which betting operators licenced overseas (for example, Betfair, licenced in Gibraltar) operate to bring them in line with operators licenced in Britain.¹²² The Gambling (Licensing and Advertising) Act 2014 came into force on 1 November 2014 and according to the Gambling Commission¹²³ will mean that all entities providing online gambling facilities to those in Britain will be regulated, rather than the 15 % of online gambling companies regulated prior to the legislation. The Gambling Commission underline that the effect of the new law will be to

“ensure operators report suspicious activity directly to us; all of which should provide greater transparency to consumers and protection against match fixing”.¹²⁴

The Convention envisages therefore a greater role for national regulators, who will (subject to the national legislative framework) have draconian powers to step in and suspend betting, based of course on information they will receive from the ‘national platforms’ whose role is to pool intelligence received from sports bodies and betting operators.

9 Conclusion

Professional sport has become a global industry; there were 20 international or global sporting events in 1912, by 2005 there were 1000.¹²⁵ Sport-governing bodies are keen that other actors, notably national regulators, investigatory agencies and prosecuting authorities, play a role in combatting match-fixing, which with its association with money laundering and international crime, requires cross-border and multi-agent cooperation to eradicate. The aim of the Convention is to introduce cooperation, not only within individual states between the interested stakeholders, including sports governing bodies and regulators, but also internationally between states, given the global nature of sport today. It would be wrong though, for the reasons given here, to see the Convention as changing the overall relationship between the sports world and the legal order in

¹¹² See Carpenter (2014a, b) for further discussion.

¹¹³ See *n III*, p. 15.

¹¹⁴ See Anderson et al. (2014), pp. 21 ff for further discussion.

¹¹⁵ Ibid.

¹¹⁶ Ibid, p. 137.

¹¹⁷ Olfers et al. (2014), p. 24.

¹¹⁸ See <http://www.gamblingcommission.gov.uk/>.

¹¹⁹ (Section 15.1) of Licensing Condition and Codes of Practice.

¹²⁰ See Serby (2012).

¹²¹ See Anderson et al. (2014), pp. 21 ff for further discussion.

¹²² Olfers et al. (2014), p. 18.

¹²³ See <http://www.gamblingcommission.gov.uk/Gambling-sectors/Online/About-the-remote-gambling-industry/Gambling-licensing-and-advertising-act/Gambling-licensing-and-advertising-act.aspx>.

¹²⁴ Ibid.

¹²⁵ Vidal et al. (2014), sect. 2.

which it operates, characterised by a high degree of autonomy for sports bodies.

Will the Convention have an impact? It can be seen that the Convention has modest aims, mainly better coordinated cooperation between interested parties, all of whom to some extent as we have seen have already, to varying degrees, cooperate and act already in the ways envisaged by the Convention. Because there are stark cultural differences in regard to attitudes towards gambling that prevail in different societies and jurisdictions, an international convention that elicits a united and detailed global approach to curbing match-fixing is currently impossible. Obtaining global agreement on combatting match-fixing must be squared with contrasting state's attitudes to betting. On the one hand, the Philippines, Gibraltar and Malta view gambling operators as economic entities contributing to employment who should be encouraged, conversely states like China, US and Switzerland seek to manage the social risks associated with gambling.¹²⁶ The Convention therefore has limited aims. International cooperation in respect of investigation of match-fixing does not require global harmonised rules on gambling anymore than the work of Interpol requires harmonised criminal codes between separate states. What is required is a framework for international cooperation based on shared national approaches to fighting match-fixing, with common assumptions on the roles to be played by the various stakeholders: governments, police forces, betting operators and sports organisations. This is the essence of the Convention.

Although there have been calls for the establishment of the equivalent of WADA (and the accompanying World Anti-Doping Code first instituted in 2004) for match-fixing i.e. a so-called World Sports Integrity Agency,¹²⁷ the Council of Europe Convention on Manipulation of Sports Competitions is a better framework. It devolves the work of fighting match-fixing down through the constituent stakeholders, with a loose overarching supervisory role for national governments to ensure the fight is given due primacy. As Carpenter¹²⁸ points out the Convention needs support from states such as the UK, France, Spain and Italy who have been cautious in light of the unknown impact of the European Convention on Human Rights. Until the outcome of the complaint brought by Malta is known, or indeed it is known how many states from outside Europe sign and ratify the Convention, it is not clear whether the Convention will have much impact.

Chapter III of the Convention which covers the setting up of national platforms and more streamlined exchanges of information, will greatly assist sharing information on

match-fixing between different actors in one state (e.g. sports bodies, betting operators, gambling regulators, prosecuting bodies) and between different states' national platforms. Currently there is a complex set of memoranda of understanding between different betting operators' monitoring services and diverse sporting organisations, which is too random and cumbersome. This is the main achievement of the Convention.

What are the obvious limitations of the Convention? The obvious flaw in the Convention is that it seeks to increase the regulation in the legal betting market, thereby potentially driving those who arrange match-fixing into the arms of the illegal betting market, in so much as they are not already there. Given that betting on sport is prohibited in large parts of the world, including most Muslim countries, India, Indonesia and Thailand, it is not surprising that according to one study 80 % of bets on the global sports betting market are through illegal operators, who will be largely untouched by the Convention.¹²⁹

With the advent of the internet more and more betting is done online and it is estimated that about 80 % of betting operators are established in low taxation, lightly regulated regimes such as exist in Gibraltar, Antigua and Barbuda and Costa Rica (where no online gambling licences are granted although there are estimated to be between 250 and 500 operators¹³⁰). Until such states accede to the Convention its impact will remain limited.

One of the chief strategies the Convention employs to curb match-fixing is through a coordinated approach for monitoring betting markets, but monitoring the level of bets and reporting unusual patterns (e.g. SportsRadar and the BDFS monitoring system) has not actually been instrumental in a great number of convictions. Criminals inevitably tend to avoid operators using sophisticated monitoring systems, and spreading bets across different operators also undermines the system.

For all these reasons it would be wrong to assume that the Convention represents a final solution in the fight against match-fixing. Yet commentators who have described the Convention as being "*of great significance, and a fundamental step*" in combatting match-fixing,¹³¹ and "*potentially the most significant legal instrument relating to match-fixing worldwide*", are not wrong.¹³² Given the nature of the match-fixing problem and its associations with international criminal networks and the ever increasing proximity between betting and the internet, there is no easy solution. The Convention is a spur to more

¹²⁶ Vidal et al. (2014), sect. 13.

¹²⁷ See Veuthey (2014), p. 104.

¹²⁸ Carpenter (2014b).

¹²⁹ Vidal et al. (2014), sect. 3.

¹³⁰ Vidal et al. (2014), sect. 3.

¹³¹ Olfers et al. (2014).

¹³² Carpenter (2014b).

governments to take the problem seriously, which in itself is a very positive outcome.

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