

# Match-fixing: framing the fight-back

**Kevin Carpenter** reviews the legal provisions of the Council of Europe's convention against match-fixing, welcoming the creation of a framework for transnational measures to combat the threat to sport integrity

**O**n 18 September 2014, potentially the most significant legal instrument relating to match-fixing worldwide was declared open for signature at a Council of Europe (CoE) conference for sport ministers in Macolin, Switzerland.

At the meeting, 15 states signed the Council of Europe Convention on the Manipulation of Sports Competitions, and it is hoped that many more will follow. An Explanatory Report (ER) on the Convention was adopted at the same time, which is helpful for analysing the legal content within the Convention.

The CoE is a human rights organisation with 47 member states and is wholly separate from the European Union – although all 28 members of the EU are also part of the CoE. All CoE member states are signatories to the European Convention on Human Rights (ECHR), a treaty that was designed to protect human rights, democracy and the rule of law in Europe following the Second World War.

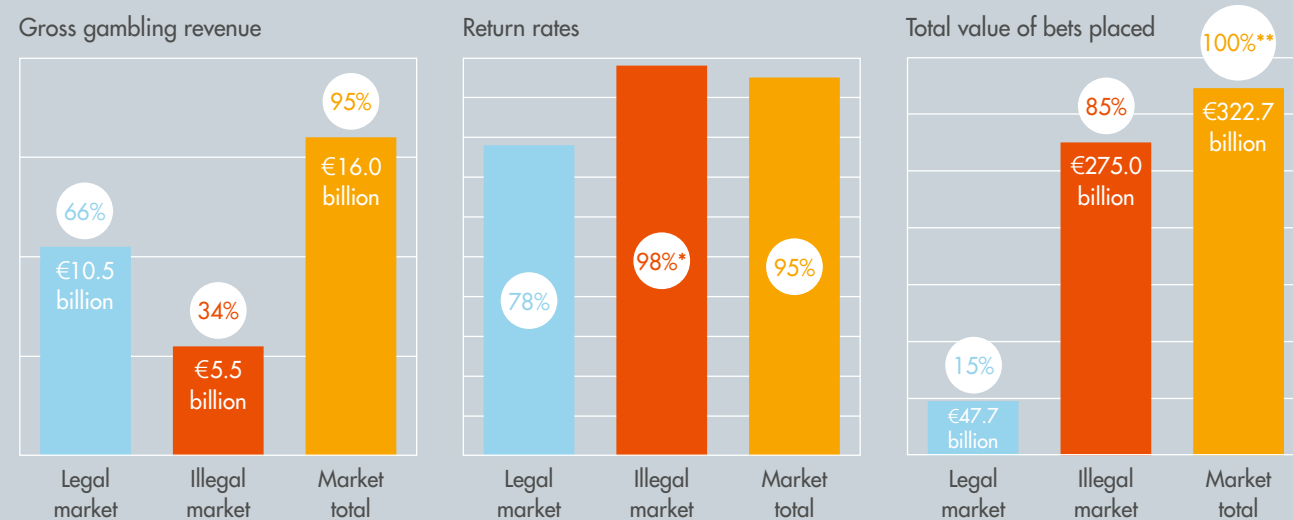
The European Court of Human Rights in Strasbourg, France oversees the implementation of the ECHR in member states. Complaints of human rights violations can be brought to the Strasbourg Court once all possibilities of appeal have been exhausted in the member state concerned.

The main thrust of the CoE's policy on sport, most recently exercised through its Enlarged Partial Agreement on Sport (EPAS), has been to uphold certain principles, including the independence, autonomy and self-regulation of sport, while at the same time seeking to prevent certain adverse phenomena, such as doping, spectator violence and, now, match-fixing. They strike at the heart of key human rights in the ECHR, including: the right to life, prohibition of forced labour, the right to a fair trial and the right to an effective remedy.

The CoE first discussed match-fixing in 2008 at a ministerial meeting held in Athens. The committee then adopted Recommendation CM/Rec(2011)10 on

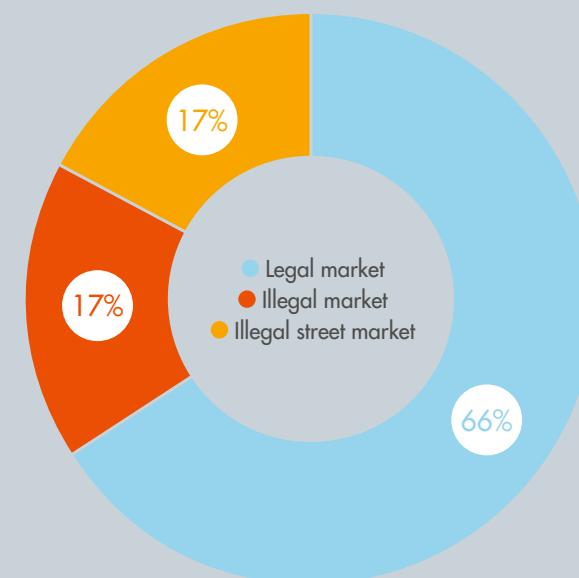
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## Structure of the sports betting market, 2011



\* If the gross gambling revenue (GGR) value for the illegal market is substituted by 96 per cent, the illegal market volume (in bets) would be €137.5 billion, and a total market of €185.2 billion, or a little less than half of the number provided in the table above, for a GGR difference of only two points. This shows the extreme volatility of the bets variable in relation to GGR and the limited interest in reasoning in terms of bets.

\*\* Obtained by calculation



Source: Protecting the Integrity of Sport Competition, The Last Bet for Modern Sport

Promotion of the Integrity of Sport Against Manipulation of Results, Notably Match-Fixing in 2011 – which formed the framework for the beginning of the Convention in October 2012. The Convention had to go through a number of stages of the CoE's legislative process, which included receiving input from a number of key stakeholders in sport, not just the member states themselves.

The two-year drafting and negotiating process was coordinated and led by EPAS, an organisation providing a framework for a pan-European platform of intergovernmental sports cooperation. They encourage dialogue between public authorities, sports federations and non-governmental organisations to promote sport, as well as making it healthier, fairer and better governed.

Despite being a European-led instrument – the EU was part of the drafting process, having been authorised to participate by the EU Commission – the CoE are extremely mindful of the global nature and threat from match-fixing, and are also encouraging non-CoE member states and non-European countries to sign up. Australia, New Zealand, Canada, Japan, Israel and Morocco have been consulted during the Convention's negotiations and are expected to sign.

### Structure of the Convention

The Convention is a legally binding instrument comprising a preamble and nine chapters made up of 41 Articles that cover: prevention, law enforcement, international cooperation measures and the exchange of information.

A number of important overriding principles and the background are set out within the preamble. For instance, the CoE attributes the significant increase in the number of match-fixing cases worldwide, but particularly in Europe, to two specific elements:

1. the proliferation of different types of betting, which are often difficult to monitor; and
2. the development of a large liquid illegal betting market, which has high pay-out rates that attract criminals with increased possibilities of laundering.

Both of these factors were covered extensively in the ICSS-Sorbonne report *Protecting the Integrity of Sport Competition: The Last Bet for Modern Sport*, which was published in May 2014.

The preamble also acknowledges that the autonomy of sport is only conditional, and there are certain times, as with protecting the integrity of sport, that public authorities must be involved. Furthermore, the threat to the rule of law is specifically mentioned in the *Explanatory Report* due to the fact that: "The manipulation of sports competitions poses a challenge to the rule of law because it is linked to fraud, organised crime and corruption."

### Purpose and guiding principles

It is important to set out the purpose and objectives in full as they underpin the remaining Chapters and Articles of the Convention. Article 1 states:

1. The purpose of this Convention is to combat the manipulation of sports competitions in order to protect the integrity of sport and sports ethics in accordance with the principle of the autonomy of sport.
2. For this purpose, the main objectives of this Convention are:
  - a. to prevent, detect and sanction national or transnational manipulation of national and international sports competitions;
  - b. to promote national and international cooperation against manipulation of sports competitions

between the public authorities concerned, as well as with organisations involved in sports and in sports betting.

It is important to note that the phrase 'manipulation of sports competitions' is used rather than 'match-fixing', as the Convention states at the outset that it covers the full range of offences associated with this complex area.

This leads neatly on to the definitions in Article 3, which, having seen earlier drafts, were the subject of much negotiation and legal amendment. The key definition is the aforementioned 'manipulation of sports competitions', which I believe strikes a good balance between being clear and concise, and yet sufficiently wide in scope. It is defined as: "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." Undue advantage does not always need to be direct financial gain and covers other tangible or intangible advantages (para 55 ER). One high-profile example of the latter is the match-fixing orchestrated by Fenerbahçe in the 2010/11 Turkish Super League, which resulted in the team finishing first and qualifying for the UEFA Champions League – from which they were subsequently banned for two seasons, with a further campaign suspended within five years.

It is encouraging that not only has "sports betting" been defined, but these activities have also been clarified:

- Illegal sports betting – "any sports betting activity whose type or operator is not allowed under the applicable law of the jurisdiction where the consumer is located" (Article 3.5.a).



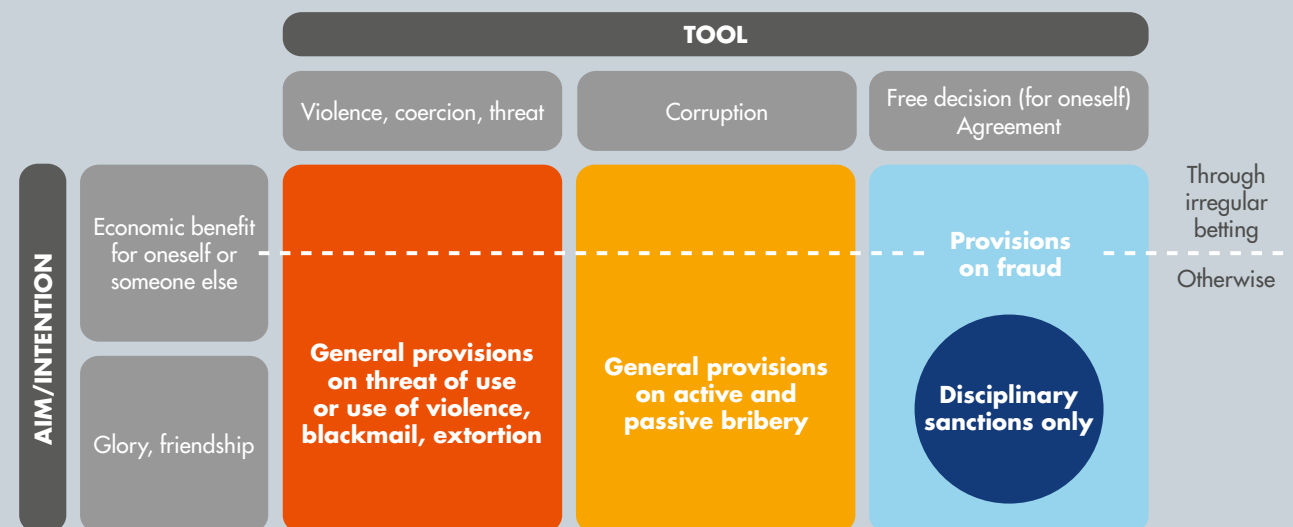
- Irregular sports betting – "any sports betting activity inconsistent with usual or anticipated patterns of the market in question or related to betting on a sports competition whose course has unusual characteristics" (Article 3.5.b).
- Suspicious sports betting – "any sports betting activity which, according to reliable and consistent evidence, appears to be linked to a manipulation of the sports competition on which it is offered" (Article 3.5.c).

This is a key distinction for signatories to understand, as when it comes to identifying and investigating potential betting-related match-fixing, the latter two terms are often misunderstood. Betting on a particular sports competition can be irregular for a number of reasons, perhaps legitimate, without being suspicious.

## The purpose of the Convention is to combat manipulation to protect the integrity of sport

Chapter II, which covers prevention, cooperation and other measures, places a number of obligations on stakeholders within a particular signatory state, which are each referred to as a Party. Article 4, on domestic coordination, recognises that no one stakeholder within a state, whether a sports body, law enforcement or betting operator, can successfully work towards eradicating match-fixing without cooperating. To do so they must undertake

## Council of Europe classification of criminal offences



This table was used during the drafting stage of the Convention, it aims to clarify what can constitute a criminal offence.

Source: *Protecting the Integrity of Sport Competition, The Last Bet for Modern Sport*

a detailed risk assessment and establish appropriate procedures (Article 5). In addition, the education of all stakeholders must be delivered (Article 6). However, Parties must be careful not to place too much emphasis on this aspect, as it must be part of a holistic approach alongside the measures in Article 5, as well as others in the Convention.

The inclusion of the following stipulation will have been driven in no small part by players' unions and reports, such as the report by FIFPro, *Don't Fix It* from May 2014. Article 7, which is aimed at sports organisations and competition organisers, states that: "Each Party shall encourage sports organisations and competition organisers to adopt and implement rules to combat the manipulation of sports competitions as well as principles of good governance, related, inter alia to... compliance by sports organisations and their affiliated members with all their contractual or other obligations." Failure to pay officials on time, in full, or indeed at all, is a principal driver behind why officials in sport choose to fix.

Of particular interest, Article 7 says that: "Each Party shall encourage its sports organisations, and through them the international sports organisations to apply specific, effective, proportionate and dissuasive disciplinary sanctions and measures to infringements of their internal rules against the manipulation of sports competitions, in particular those referred to in paragraph 1 of this article, as well as to ensure mutual recognition and enforcement of sanctions imposed by other sports organisations, notably in other countries," (Article 7.3). There is criticism from some quarters that lifetime bans for first-time match-fixers are disproportionate, especially when the sanctions for doping, another integrity offence, are considered on a case-by-

case basis. Recently, the Court of Arbitration for Sport in *Fenerbahçe Spor Kulübü v UEFA* (CAS 2013/A/3256) looked to the regime on doping for guidance on the proportionality of the sanction of a two-year disqualification from the UEFA Champions League for match-fixing.

### Regulation and data protection

Article 8, on measures regarding the financing of sports organisations, addresses the need for consideration of how sports governing bodies will be funded in order to combat "manipulation of sports competitions", as this is currently a major obstruction in the fight. Betting operators and regulators are covered in this chapter, alongside other important provisions regarding: the exchange of information between key stakeholders (Article 9.1.a), the tracing and blocking of financial flows from sports betting (Articles 9.1.d and 11.1.b), preventing the misuse of inside information (Article 10.1), and exploring the most suitable means, in accordance with the law, to combat illegal betting operators (Article 11).

Article 9, dealing with measures regarding the betting regulatory authority or other responsible authority or authorities; 10 on sports betting operators; and 11, covering illegal sports betting, all address the sports betting industry. Each Party must have a dedicated body tasked with regulating betting in their country. Importantly, as part of their mandate, the Convention mentions facilitating the exchange of information between stakeholders, transparency in financial flows and the ability to suspend markets where there is suspected manipulation (Article 10.1). As for sports betting operators themselves, the Convention focuses on the need for them to avoid conflicts of interest and misuse of inside information. Parties are given wide discretion to

combat illegal sports betting via the most suitable direct and indirect ways (paragraph 111, ER). Practically, this has proved challenging for many countries up to this point due to difficulties in blocking cross-border communications.

Article 12 – covering the exchange of information between competent public authorities, sports organisations and sports betting operators – places an obligation on Parties to: "Facilitate, at national and international levels and in accordance with its domestic law, exchanges of information between the relevant public authorities, sports organisations, competition organisers, sports betting operators and national platforms," (Article 12.1). This is another significant hurdle holding back an effective fight against match-result manipulation. For instance, in the UK there is uncertainty about how to apply section 35 of the Data Protection Act 1998 to cases of match manipulation. In fact, the difficulties of data protection are discussed further below under Article 14.

In addition to the requirement to have a national sports betting regulator under Article 9, Article 13 requires that each Party have a "national platform" whose primary function is to "act as an information hub, collecting and disseminating information" to relevant stakeholders (Article 13.1.a and para 119 ER). This echoes the effective role the Joint Assessment Unit played at London 2012 in dealing with the threat to the Olympic Games from manipulation, as discussed in *ICSS Volume 1 Issue 4*.

Article 14 addresses the ever-growing area of data protection, as the processing of personal data is central to effective international cooperation in this field. The Explanatory Report for Article 14 sets out the full range of activities that can be engaged when instances of match manipulation arise, which include: administrative cooperation, consumer protection, child protection, combating fraud and money laundering, identity theft and other forms of cybercrime. Article 14 itself obliges Parties to comply with the vast array of regional and international laws on data protection when drawing up their own measures (Article 14.1 and para 125 ER). In the UK this is the Data Protection Act 1998, which was passed to implement the EU Directive 95/46/EEC. In drawing up their own measures, Parties must also consider a number of key legal concepts in the field, including lawfulness, adequacy, relevance, security and accuracy (Articles 14.2 and 14.3 and paras 126 and 128 ER). Many of these are referred to as Data Protection Principles in Schedule 1 of the Data Protection Act. Article 14.3 highlights the imperative for data not to be shared beyond the purposes for the Convention or retained for longer than necessary. This is particularly important in relation to match manipulation given "that the organisation of sports competitions and the activities of sports betting operators generate a large volume of personal data" (para 127 ER). What is a 'necessary' period of time is always fact-specific.

The harmonising of criminal laws across sovereign states is always contentious in whatever field and so it is of little surprise that a light-touch approach is taken in the Convention, which states: "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). There are a number of ways in which match manipulation is covered in national criminal laws – including corruption, fraud, cheating at gambling and specific sport fraud, which are outlined in KEA's *Match-fixing in Sport: A mapping of criminal law provisions in EU 27*. Therefore, "[the Convention] does not require the establishment of a specific and uniform offence for the manipulation of sports competitions," (para 130 ER). However, Chapter IV of the Convention – substantive criminal law and cooperation with regard to enforcement – does address some other criminal law issues in this area.

### Deterring organised crime

Match manipulation, which can be linked to organised crime, often involves some form of money laundering. The international legal instruments mentioned in Article 16 – laundering of the proceeds of criminal offences relating to the manipulation of sports competitions – are one tool that can be used to quell match-fixing activity. Helpfully, Article 16.3 offers an example of how the manipulation of sports competitions can be woven into a Party's money laundering prevention framework, "by requiring sports betting operators to apply customer due diligence, record keeping and reporting requirements".

One interesting provision that should in practice act as a significant deterrent is Article 18, which covers corporate liability. It recommends that Parties make 'legal persons' (for example, a football club) vicariously liable for the offences committed in Chapter IV by any "natural person, acting either individually or as a member of an organ of the legal person, who has a leading position within the legal person," (Article 18.1). 'Legal person' should cover sporting organisations in whatever legal form they exist and operate. To have a 'leading position' the natural person (for example, any club official) must have either: a power of representation, authority to take decisions or exercise control (para 149 ER). Article 18.2 extends this to an act of omission in terms of a lack of supervision by a legal person over its officials. In addition to the criminal liability, which is the focus of Article 18, it is also made clear that legal persons are also liable under civil and administrative/regulatory law, the latter being what is most commonly known as sports law (Article 18.2). Finally, for avoiding doubt, it is stressed that any form of vicarious liability that legal persons may be subject to is "without prejudice to the criminal liability of the natural persons who have committed the offence" (Article 18.4).

Many of the issues covered in Article 18 have been considered, addressed and confirmed as good principles in a sports law context in a series of match-fixing cases that have gone to the Court of Arbitration for Sport: *FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdravski v UEFA* (CAS 2009/A/1920), *FC Karpaty and FC Metalist v Football Federation of Ukraine* (Unreported, 2 August 2013), *Beşiktaş Jimnastik Kulübü v UEFA* (CAS 2013/A/3258), *Fenerbahçe Spor Kulübü v UEFA* (CAS 2013/A/3256) and *Eskişehirspor Kulübü v UEFA* (CAS 2014/A/3628).



## Methods of identifying and regulating risks to sport from illegal betting



Source: *Protecting the Integrity of Sport Competition, The Last Bet for Modern Sport*

Article 19 on jurisdiction is important, given the transnational nature of match-fixing. Articles 19.1.a and 19.1.d are the most relevant; the former is based upon the territoriality principle (para 154 ER) and the latter on a combination of the nationality principle and the potential need for Parties to investigate acts committed abroad by an individual who resides in their country (para 156 ER). In addition, Article 19.3 gives the ability to establish jurisdiction to investigate where it is possible to extradite the alleged offender. Furthermore, Article 19.4 provides another good example of how the Convention encourages Parties to communicate and cooperate wherever possible: “In order to avoid duplication of procedures and otherwise facilitate the efficiency or fairness of proceedings, the Parties involved are required under paragraph 4 to consult in order to determine the most appropriate jurisdiction for the purposes of prosecution,” (para 159 ER).

### Protection and sanctions

Crucially, in Chapter V, Article 21 discusses protection measures. The Article encourages each Party to provide “effective protection” in order to support people that have information on match-fixing and the courage to report it to the relevant authorities. The importance of this cannot be underestimated, due to both the stigma within sport against those who report misconduct and potential criminality, as well as the threatening presence of organised criminals. “Intimidation of witnesses, whether direct or indirect, may take different forms, but its purpose is nearly always to destroy and discredit evidence against defendants so that they have to be acquitted,” (para 186 ER). If protection can be provided for such people, and their identity protected throughout the sporting and/or criminal process, then it will increase the willingness to provide valuable information and also to testify at a later date (para 187 ER).

Chapter VI, covering sanctions and measures, builds upon other provisions of the Convention already discussed. It outlines the desired punishments that can be imposed in the non-sports law environment on those found to have committed offences related

to match manipulation. A repeated theme with sanctions for these violations – be it criminally pursuant to Article 22 (criminal sanctions against natural persons) or on a civil basis pursuant to Article 23 (sanctions against legal persons) – is that they must be “effective, proportionate and dissuasive”.

Article 25 addresses the seizure (temporarily taking control) and subsequent confiscation of assets illegally gained through match manipulation. Having laws that allow law enforcement and the judicial authorities to do this may be a more effective way to fight organised crime than the threat of prison (para 197 ER), as it cuts off the funds that those involved in fixing need in order to thrive. Regrettably, Article 25 does not go as far to suggest Parties have a civil recovery mechanism. Given that securing criminal convictions for match manipulation on the ‘beyond reasonable doubt’ standard of proof is notoriously difficult, civil asset recovery would allow the profits from fixing to be recovered on the lower ‘balance of probabilities’ standard. In the UK, this possibility can be found in Part V of the Proceeds of Crime Act 2000.

Chapter VII, on international cooperation in judicial and other matters, is where both Europol and INTERPOL have a crucial role to play alongside international sports federations. Both organisations have already undertaken a significant amount of work in this field. Furthermore, the “key role that... INTERPOL plays in facilitating effective cooperation between the law-enforcement authorities in addition to judicial cooperation” is also highlighted within the preamble. INTERPOL’s key role in fighting match manipulation is evident in its Operation Soga, an ongoing tactical operation coordinated by INTERPOL to disrupt the illegal football gambling activities of criminal organisations in Asia. By coordinating a number of national police forces in Asia, Operation Soga has had 2,360 successful raids and seized more than \$27 million in cash as of 2013.

Europol previously ran the Joint Investigation Team, code-named Operation VETO, between July 2011 and January 2013. Through this, they unearthed a total of 425 match officials, club officials, players, and serious criminals, from more than 15 countries that were suspected of being involved in attempts to fix more than

380 professional football matches. Recently, Europol signed a Memorandum of Understanding with UEFA aimed at reinforcing the fight against match-fixing in European football. INTERPOL have their own Integrity in Sport unit, which has a 10-year agreement to work in partnership with FIFA to tackle the threat to football globally from match-fixing, as well as more recent collaboration with the world football players’ union, FIFPro. In addition, and perhaps most importantly and encouragingly, INTERPOL is working more closely with the IOC – the body that has the necessary political, sporting and social clout to impact match-fixing across global sport – having signed a Memorandum of Understanding in January 2014.

### Legal and policy issues

One issue that is a constant source of debate in the field of match manipulation is whether or not a new form of intellectual property right should be introduced in the form of a betting right. This falls within Chapter II. At an official dinner in Switzerland to mark the Convention being opened for signature, UEFA Executive Committee Member Michael van Praag said: “We should also recognise sports bodies’ property rights in the context of betting. That is to

## There has already been a legal challenge to the Convention, which was launched by Malta

say, betting companies should pay a fee to the organiser of sporting competitions in cases where they offer bets on these competitions. Some nations have already implemented good practices that we could all make use of... Such a policy allows competition organisers and betting operators to agree on which aspects of the game can be the subject of betting, as well as on the monitoring and control mechanisms that are required in this area. It can also be a valuable funding mechanism to help assist in the fight against match-fixing.” The countries he mentions that have embraced the betting right to combat match manipulation are principally France, Australia and New Zealand.

As a lawyer, I see no legitimate reason why betting operators should not enter into formal agreements to pay for the opportunity to offer bets on a particular sport, given the fact, for instance, that broadcasters are not allowed to simply broadcast television coverage of a sport for free. In saying that, I do acknowledge that many betting organisations make voluntary commercial arrangements, through sponsorship, for example, as it is in their interests for sport to be clean as well. One argument against formal arrangements in the past has been that, because it is actually the illegal markets that

drive match-fixing and corruption in sport, there is very little point in restricting betting types by legal operators within an individual country. However, as there would then be money to put back into sport that could be used to combat the illegal market, this may be one justification for the proposed system. In return, sports must share information with the betting operators.

There has already been a legal challenge to the Convention, which was launched by Malta – home to a significant online gambling industry. The country’s complaint to the EU is on the basis that the definition of “illegal sports betting” in Article 3, coupled with the other betting provisions mainly in Articles 9 and 11, are incompatible with key EU law and principles. They are seen as being discriminatory and against the freedom of establishment and freedom to provide services. The practical effect of the Convention is that a betting operator licensed in, for example, Malta, could be prohibited from going about its business in another EU state, say France, if French law proscribes some of the betting methods which in Malta are perfectly legal. This would be a clear impediment to a free internal market. In Malta’s view, this goes beyond, and is not proportionate to, the objective of the Convention to combat match-fixing, and has the unnecessary and harmful effect of clamping down on regulated sports betting operators. In addition, the provisions of the Convention relating to betting may lead to harmonisation of an area that is not yet harmonised on an EU level, and is subject to a significant review at the current time by the EU institutions.

For somebody who has been working to combat match-fixing for some years, it is very pleasing that the CoE has been able to come to a political consensus to establish the Convention and have it ready for signature. Yet, as with all such international legal instruments, it is only as effective as the extent to which the signatories implement and comply with the Articles of the Convention through passing laws and regulations in their own state. In addition, it depends on how effectively the CoE and other Parties enforce compliance through the auspices of the Convention Follow-up Committee pursuant to Chapter VIII.

The immediate challenge is to convince the remaining 32 members of the CoE to sign up to the Convention, including large states, such as the UK, France, Spain and Italy, which are cautious following the wider than anticipated impact of the ECHR. Moreover, convincing as many non-CoE countries to sign the Convention and join the fight is crucial, particularly countries with large illegal betting markets that tend to fuel match-fixing activity, such as India, the US and much of Asia. ■

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