



Match-fixing in sport

A mapping of criminal law provisions in EU 27

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EUROPEAN AFFAIRS

EXECUTIVE SUMMARY

In addition to the initiatives adopted by betting operators and sport organisations, EU Member States and European organisations have clearly shown their commitment to fight against match-fixing. In the last 6 months, the Council of Europe adopted the Recommendation on promotion of the integrity of sport against manipulation of results, the EU Council the Conclusions on combating match-fixing, and the European Parliament the Resolution on the European Dimension of Sport. These texts draw attention to the problem of match-fixing and call on national governments to ensure their legislation sanctions match-fixing in accordance with the seriousness of the conduct (Council of Europe Recommendation) and to make illegal activities affecting the integrity of sport a criminal offence (European Parliament Resolution). At the national level, France amended the Criminal Code to include betting related match-fixing as a modality of the offence of corruption; Sweden introduced a bill referring to betting corruption; and Greece presented a proposal to modify the Sports Law to ensure that betting related match-fixing is punished with 10 years of imprisonment. Similar proposals are under consideration in Australia and Russia.

The purpose of this study is to illustrate how corruption in sport, specifically match-fixing, is covered in national criminal law. To this end, an extensive survey with national ministries in the 27 Member States, sporting organisations and betting operators was carried out. Information provided by these key stakeholders and completed by desk-based research, enabled the identification of the most relevant provisions that can be applied to episodes of match-fixing as well as existing case law.

The European legal landscape is not uniform; whilst some countries focus on general offences of corruption or fraud, others have implemented specific sport offences to cope with match-fixing –contained either in their criminal codes (Bulgaria, Spain), sports laws (Cyprus, Poland, Greece) or special criminal laws (Italy, Malta, Portugal). In the UK, betting related match-fixing episodes are punished under the offence of cheating at gambling. Overall, these provisions differ greatly as regards the act to be criminalised as well as the scope, objective and subjective elements of the offences or the relevant sanctions. Although our respondents did not identify serious obstacles in applying existing legislation to episodes of match-fixing, a closer examination of the most relevant provisions (either referring to general or specific sport offences) shows shortcomings that could make the provisions difficult to apply to cases of major importance (for example betting related cases concerning *amateur* sports). Moreover, in light of the survey and experts' interviews difficulties in prosecuting match-fixing are more operational than legal. Unfortunately, it was not always possible to verify the appropriateness or effectiveness of the relevant provisions against court decisions or legal doctrine. Case law is indeed very rare.

The development of the European dimension in sport by promoting fairness in sporting competitions as well as the physical and moral integrity of sportsmen and sportswomen is one of the objectives of the European Union in the field of sports (*ex art. 165 TFEU*). Moreover, the Lisbon Treaty has streamlined EU competence in criminal matters. Taking these competences into account, at the end of the study some avenues which could be explored by the EU to combat match-fixing more effectively are suggested. Recommendations aim at overcoming loopholes in existing legislation; improving police and judicial cooperation; encouraging international cooperation; enhancing the exchange of information and best practices; or encouraging further research on key issues.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	2
TABLE OF CONTENTS	3
INTRODUCTION AND METHODOLOGY	6
1. MATCH-FIXING: A THREAT FOR SPORTS INTEGRITY, A PUBLIC ORDER ISSUE .	9
1.1 Putting Match-fixing in context	9
1.2 Measuring the problem.....	11
1.3 Match-fixing in the POLICY agenda	13
1.4 FightiNg match-fixing through criminal legislation	15
2. FIGHTING AGAINST CORRUPTION IN SPORTS – A REVIEW OF THE INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORK.....	17
2.1 Introduction	17
2.2. International legal framework	17
2.3 European Union	19
3. FROM CORRUPTION AND FRAUD TO “MATCH-FIXING” OFFENCES – A MAPPING OF CRIMINAL PROVISIONS IN EU27	23
3.1 Introduction	23
3. 2 Corruption (Belgium , Czech Republic, Finland, France, Luxembourg, Romania, Slovakia, and Sweden) ...	23
3.3 Fraud (Austria, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Latvia, Lithuania, the Netherlands and Slovakia)	29
3.4 Cheating at gambliNg (UK).....	32
3.5 Sport offences: sport corruption in the criminal codes (Bulgaria and Spain)	33

3.6 Sport offences: sport corruption in sports laws (Cyprus, Greece and Poland)	35
3.7 Sport offences: sport criminal laws (Italy, Malta and Portugal).....	38
 4. CONCLUSIONS: THE EFFECTIVENESS OF THE EXISTING LEGAL FRAMEWORK	42
4.1 Issues related to the legal provisions.....	42
4.2 Operational problems	47
 5. POLICY RECOMMENDATIONS	48
 BIBLIOGRAPHY (CITED REFERENCES)	54
 ANNEX 1 -COUNTRY PROFILES	65
AUSTRIA.....	65
BELGIUM	66
BULGARIA	67
CYPRUS	69
CZECH REPUBLIC.....	71
DENMARK	74
ESTONIA.....	75
FINLAND	76
FRANCE	78
GERMANY	80
GREECE.....	82
HUNGARY	83
IRELAND	84
ITALY	85
LATVIA	86
LITHUANIA	87

LUXEMBOURG	88
MALTA.....	89
THE NETHERLANDS.....	91
POLAND.....	92
PORTUGAL	94
ROMANIA.....	97
SLOVAKIA	100
SLOVENIA.....	102
SPAIN.....	104
SWEDEN	105
UNITED KINGDOM.....	107
ANNEX 2 - OFFENCES AND PENALTIES - RECAPITULATIVE TABLE	110
ANNEX 3 -DISCIPLINARY DECISIONS	114
ANNEX 4 - ONGOING INVESTIGATIONS	116
ANNEX 5 - SURVEY PARTICIPANTS	118
ANNEX 6 - LIST OF INTERVIEWS	122

INTRODUCTION AND METHODOLOGY

This study on criminal Law and match-fixing has been carried out for the European Commission (Directorate-General for Education and Culture). The research lasted six months, from September 2011 to February 2012. It was conducted by KEA European Affairs, a Brussels based advisory and research organisation specialised in sport and creative industries. Alexandre Husting, María Iglesias, Philippe Kern and Zivile Buinickaite were the main researchers of this study. Additionally, Chantal Cutajar (Criminal Law Professor and Head of the G.R.A.S.C.O., *Groupe de recherches actions sur la criminalité organisée*), Noël Pons (independent consultant specialised in fraud, money laundering and corruption) and Sylvia Schenk (Sports specialised lawyer and Transparency International expert) have assisted the KEA team with the research.

Purpose and scope of the study

The broad objective of the study is to identify and analyse the legal framework applicable to match-fixing in the EU Member states. The main objectives of the study are to:

- Map the situation concerning the criminal provisions applicable to sporting fraud and notably to match-fixing in the 27 EU Member states;
- Identify in particular existing legislations establishing match-fixing as an offence and providing for relevant sanctions;
- Provide an overview of relevant criminal case law on the application of existing legislation to cases of match-fixing.

Methodological approach

The methodological approach of this study includes a broad collection of primary data (questionnaires and interviews) and secondary data (literature).

The data collection for the study was based on:

- Questionnaire and survey data: Different questionnaires were sent to:
 - o National ministries in the 27 EU Member states.
 - o Sports organisations; the Union of European Football Associations (UEFA), European Rugby Association (FIRA-AER) and International Tennis Federation (ITF) disseminated the questionnaires to their member associations.
 - o Betting operators; European Lotteries, European Gaming and Betting Association (EGBA), and Remote Gambling Association (RGA) were contacted. The European Lotteries disseminated the questionnaire to their members.
 - o Additionally, other 2 organisations contributed to the survey: *Autorité de Régulation des Jeux en Ligne* (ARJEL) and the European Sports Security Association (ESSA).

Annex 5 lists all the organisations that have participated in the survey: 28 National Ministries, 33 national sports organisations, 23 betting operators plus the responses of ARJEL and ESSA.

- Qualitative interviews: Interviews with national ministries responsible for sports, betting organisations, sports organisations, law enforcement agencies and other relevant organisations and independent experts were conducted, either through face-to-face discussions or over the phone.

Annex 6 presents the list of interviews. In total 31 experts.

- Literature: academic journals and relevant academic literature, ministerial/governmental reports on sport and corruption, reports by research institutes and international organisations (Transparency International, Greco, IOC, FIFA, UEFA, FIFPRO, etc). The literature reviewed was in English, French, German, Italian, Lithuanian, Polish, Portuguese and Spanish. Media sources in the Member states were also consulted.

Research constraints

Although the final mapping included in the following sections contains a good overview of the most relevant legislation to be applied to episodes of match fixing throughout Europe as well as case law, it is important to note that the research team was highly dependent on the information provided through the survey and interviews done. In the data collection process we have identified the following research constraints:

- Relatively small amounts of reliable information provided in the questionnaires

Given the complex and sensitive nature of the topic and the relatively weak levels of engagement of some respondents, the rate of complete answers to the questionnaires was quite low. Moreover it must be noted that the quality of responses varied a lot. Additionally the elements brought by the different stakeholders into the field of investigation of the study were sometimes contradictory and needed to be completed by further research. In the countries where manipulation of sports results has never reached judicial courts it was more difficult to identify all legal provisions applicable to this criminal activity. And even in those countries where case law did exist, it was not always possible for our respondents to identify or provide us with the relevant court decisions.

- Lack of literature on the issue of the legal framework dealing with manipulation of sports results in Europe

Little academic work has been carried out on the specific topic of the study.

We would also like to clarify that the opinion of some respondents, in particular the ministries of Sports, does not necessarily reflect the official position of the country as regards the need of a general or specific offence to better prosecute match-fixing cases.

Structure of the study

The study is organised in five sections.

Section 1 establishes the working definitions of sporting fraud and match fixing. It refers to the existing statistical data and mentions policy documents adopted by European institutions as well as key initiatives adopted by different stakeholders. At the end of the chapter, key issues concerning the use of criminal legislation to fight match-fixing are briefly considered.

Section 2 reviews the main international and European legal instruments that may apply to match-fixing.

Section 3 presents a mapping of the criminal provisions in 27 Member States and the analysis of the most relevant provisions. For each country, it refers to the national legislation as well as the case law concerning the application of the relevant framework to episodes of match-fixing.

Section 4 presents the main findings of the research paying special attention to the effectiveness of the existing legal framework and to the main obstacles identified for the prosecution of match-fixing cases.

Section 5 lists a set of ten recommendations for the EU, aiming at better addressing the issue of match fixing.

Finally, cited references are contained in the Bibliography. 5 Annexes are attached to the study: Annex 1: country profiles, Annex 2: recapitulative table with offences and penalties, Annex 3: disciplinary decisions, Annex 4: ongoing investigations, Annex 5 survey participants, and Annex 6: List of interviews.

1. MATCH-FIXING: A THREAT FOR SPORTS INTEGRITY, A PUBLIC ORDER ISSUE

1.1 PUTTING MATCH-FIXING IN CONTEXT

Integrity in sports has come to the forefront. Modern sport is threatened by doping scandals, transfers of very young players and sport corruption. Match-fixing, also described as sport manipulation, sporting fraud, or spot-fixing¹ is indeed the primary focus of this study.

Towards a definition of the manipulation of sport results

In the small amount of available literature on sport corruption there is much debate as to what constitutes corrupt practices in the field of match-fixing (Maening 2005, 187–225). Some authors emphasise the link to betting activities –for example the French research centre IRIS defines sporting corruption as any manipulation or attempted manipulation of a result or aspect of a game with the aim of securing financial gains on the sports betting market (Iris 2012). Gorse and Chadwick adopt a broader approach, defining sport corruption as “any illegal, immoral or unethical activity that attempts to deliberately distort the result of a sporting contest (or any element of it) for the personal material gain of one or more parties involved in that activity” (Gorse and Chadwick 2011).

The definition of match-fixing provided by the Australian Sport Minister (Sport and Recreation Ministers’ Council Communiqué 2011) is even more complete: “Match-fixing involves the manipulation of an outcome or contingency by competitors, teams, sports agents, support staff, referees and officials and venue staff. Such conduct includes:

- a. the deliberate fixing of the result of a contest, or of an occurrence within the contest, or of a points spread;
- b. deliberate underperformance;
- c. withdrawal (tanking)²;
- d. an official’s deliberate misapplication of the rules of the contest;
- e. interference with the play or playing surfaces by venue staff; and
- f. abuse of insider information to support a bet placed by any of the above or placed by a gambler who has recruited such people to manipulate an outcome or contingency”.

The definition provided in this study echoes the essential elements of the one provided by the recent Recommendation of the Council of Europe on promotion of the integrity of sport against manipulation of results, notably match-fixing. Accordingly:

The manipulation of sports results covers the arrangement on an irregular alteration of the course or the result of a sporting competition or any of its particular events (e.g. matches, races...) in order to obtain financial advantage, for oneself or for other, and remove all or part of the uncertainty normally associated with the results of a competition.

This covers match-fixing specifically, and exclude doping and public order violation such as hooliganism.

¹ Spot-fixing refers to illegal activity in a sport where a specific part of a game is fixed.

² Tanking is the act of giving up a match or “throwing it away”, losing intentionally or not competing.

In this study, the terms 'sport fraud', 'manipulation of sporting results', 'manipulation of competitions' and 'match-fixing' are used interchangeably, except otherwise indicated.

Match-fixing motivations can refer to obtaining direct or indirect economic benefits; this can be linked to betting or non-betting cases.

Betting motivated cases involve fixing competitions with the primary aim of achieving an economic gain indirectly from sport through betting activity. This type of match-fixing has been highly publicised on the occasion of "big sporting cases". The first proven case of betting motivated match-fixing seems to be the 'Black Sox Scandal' in 1919 which involved the Chicago White Sox baseball team, considered one of the best in the United States at that time. During one game, they surprisingly lost 9:1 to the Cincinnati Reds (Iris 2012, 8) and one year later players admitted to deliberately thwarting the World Series with the involvement of a gambling syndicate. More recent cases include, the 1964 British betting scandal, the 2004–2005 manipulation of football matches in Belgium, the 2005 Bundesliga scandal in Germany, the Finnish football cases in 2011. Also related to betting, insider information cases concern the misuse of information by athletes or officials, as well as programmers or brokers using inside information to place bets and make profits (Gorse and Chadwick 2011, 21)³. However insider information is not solely linked to the manipulation of results may also refer to information that does not relate to match or sport-fixing events.

Non-betting cases, concern so called sports motivated match-fixing – the fixing of a competition with the primary aim of achieving a sporting advantage directly from its result. Sporting motivations may 'simply' involve winning a match or a competition, escaping relegation or qualifying for a higher level of the competition. This is for example the case of the well-known "end-of-season-phenomenon" when deals are made for avoiding relegation or keeping a club in a competition. Whilst economic benefits are not the primary objective, it is clear that this results in a second step of sporting advantage. Maintaining a position in a division or qualification for higher competition of course have financial consequences, whether for public subsidies, television rights or sponsorship contracts. As these examples lead to economic advantages illegally obtained these sports cases can often fit with our definition of match-fixing. The first documented case of sporting motivated match-fixing seems to be that of the boxer Eupolos of Thessaly who, at the Olympic Games of 388 BC, bribed three of his competitors to allow him to win a gold medal (Archaeology 1996). In modern sport, famous examples of sporting motivated match-fixing include the 1971 Bundesliga scandal, the 1982 Belgian case 'Standard-Waterschei', the OM-VA case in France (1993–1995), the Italian 'Calciopoli' scandal (2006) and the alleged race-fixing at Singapore-gate in Formula One in 2008.

Existing data shows that non-betting cases are less numerous than betting motivated cases, although match-fixing for sporting reasons seems widespread even in lower leagues. Even though it is generally thought that betting has not introduced corruption into sport (Transparency International 2008; Vilotte 2011), there have been an increasing number of match-fixing cases in recent years. This may, in part, be explained by the increase in the online gambling offer (Forest 2008, 4–5), which has significantly increased the number of people with a direct economic interest in sport competitions (Vilote 2011, 6), and by the fact that the internet limits the risk of being caught (Service Central de Prevention de la Criminalité 2007, 7) and via internet, gambling on sport events can cross borders. Other reasons of minor importance are the increasing number of sport competitions and even the improvement of investigation techniques.

Even though certain sports seem particularly affected by match-fixing (notably cricket, football and tennis) all sport can be affected. Cases do exist in snooker, basketball, sumo or rugby, for example. Both collectives and individuals are exposed (Vilotte 2011, 8), and certain authors even contend that individual sports such as tennis are the easiest to manipulate because bribing can be targeted at one person (Forest 2008, 7). The level of sport practices seem to be of little importance and manipulation may occur in either professional or amateur contexts, in higher and lower leagues (Forest 2008, 8), although it does seem more common in competitions or disciplines

³ In the statistical analysis carry out by Gorse and Chadwick, 163 of the 2089 cases of sport corruption, were examples of the misuse of inside information for betting purposes.

which are less stringently scrutinised (Carpenter 2011, 4). In addition, all countries can be touched, in Europe and beyond. Players are not the only people involved in match-fixing; several cases of betting related manipulations have involved the participation of referees, officials, sport managers and agents, in addition to people beyond sport circles. Often, clubs and players in bad economic situations are the most likely targets for potential fixes, particularly in tennis (FIFPro 2012; IRIS 2012, 20). Finally, match-fixing seems to be more prevalent where it does not affect the final outcome of a competition (Carpenter 2011) and it is frequently linked to broader criminal activity such as corruption, fraud and money laundering (Pons 2011; Pons 2010, 30).

1.2 MEASURING THE PROBLEM

The first case of match-fixing in modern sport seems to have occurred in 1915 in a match between Manchester United and Liverpool, which was fixed in Manchester's favour. United won 2:0 and avoided relegation. One of the latest major incident in Europe concerned Finnish football matches. One team, Tampere United was suspended indefinitely from Finnish football for accepting payments from a person known for match-fixing (BBC News 2011). Between these two events, European sport has been affected by a number of other cases of match-fixing including the "Zheyun Ye" case in Belgium 2004–2006; the Italian football scandals 2005–2006; the "Apito Dourado" Golden Whistle affair in Portuguese football 2004, and the Hoyzer and Bochum scandals in Germany, the arrests of 71 people involved in a soccer match-fixing scandal in Poland in 2007, or the Greek match-fixing scandal in 2011, to list the most recent ones. The 27 EU Member states are not the only countries affected by match-fixing. The universal nature of this problem is illustrated by other cases such as the Brazilian football match-fixing scandal in 2005; the scandal of sumo competitions in Japan in 2011; the scandal of the Pakistan's summer 2010 cricket tour of England with players deliberately bowling no-balls and the recent match-fixing investigation by authorities in Turkey where nearly 93 people are suspected to have been involved with fixing games in 2011.

Based on the media attention generated by betting related match-fixing and on the recent increase in work around this issue, one could conclude that match-fixing is more widespread than previously thought (Oxford Research 2010, 19–20). But official statistical data on the number of suspected cases and on the number of proven cases are lacking. Recent research has attempted to provide information on betting related cases dating back to 2000, or for the last decade. However, results do not always coincide; for example Forest listed 42 betting and non betting related cases (Forest 2008), Gorse and Chadwick 57 for the last 10 years (Gorse and Chadwick 2010), Kalb 64 (Kalb and Boltong 2011), and Maennig identified 22 betting relating cases (Maennig 2005). Although there are some differences, and sometimes confusion around suspected and proven cases, these references do indicate that match-fixing incidents affect only a fraction of the large number of sporting events organised each year. However, significantly, around 50 per cent of cases date from the year 2000 onwards.

Some other estimates have been published by or for sporting bodies or betting operators.

Gunn and Rees in their review of tennis concluded that although over a five year period they found suspicious betting patterns relating to 73 matches of professional tennis, only 45 showed anomalies regarding betting (Gunn and Rees 2008).

The European Sports Security Association (ESSA) which was founded in 2005 groups online and offline licensed betting operators, and runs an early-warning system to alert sport federations about suspicious betting patterns. It found 45 incidents of irregular betting in 2009 but only one was proven to be suspicious and was referred to the relevant sports governing body. In 2010 ESSA raised 58 alarms, only four of which were regarded as suspicious. Most of the cases involved either football or tennis (Calvinayre 2011).

The European Lottery Monitoring System (ELMS), founded in 1999, investigated 5000 matches between January and April 2011 and raised 93 alerts (Iris 2012,72).

Sportradar, a commercial company that monitors games for football federations and governing bodies estimates that 300 professional football matches are fixed each year in Europe (BBC News 2010).

At the national level there is a real lack of information. The UK Gambling Commission Industry Statistics state that 210 cases of suspicious betting activity have been reported to the Commission between 1 September 2007 and 30 September 2011. In 133 of these cases, the elements for suspicion of criminal activity were not sufficiently evident and the Commission either closed the cases or passed them to the relevant sporting body. With regard to the remaining two cases, only one investigation resulted in criminal proceedings – a case of caution for cheating at gambling. Almost 75% of all the 133 cases are covered by 4 sport activities: football, horseracing, tennis and snooker (Gambling Commission 2001, 16). In their previous report covering the period 2008–2009, 48 cases of suspicious betting activity were reported to the Commission between 1 September 2007 and 31 March 2009 and in 22 of these cases the elements for suspicion were not substantiated. Almost 65% of the cases related to football and horseracing (Gambling Commission 2009). In its report covering the period 2009–2010, 108 cases of suspicious betting activity were reported to the Commission between 1 September 2007 and 31 March 2010, and 31 cases were passed to the relevant sporting bodies for further investigation resulting in 8 active investigations. Almost 76% of the cases concerned football, horseracing, tennis and snooker (Gambling Commission 2010).

The recent study prepared for the Remote Gambling Association (RGA) on the "Prevalence of corruption in International sport" (2011) analyses 2089 cases of corruption in sport (match-fixing and doping) from 2000 to 2010 and shows that only 2.73% of the cases were match-fixing cases and that 1.63% of examples relate to the misuse of insider information for betting purposes. 52.63% of match-fixing cases occurred in Europe, with the majority of these cases, 70%, in football. The report concludes that "the evidence shows that, globally, the number of cases of proven match-fixing (57) is far outweighed by the number of proved doping cases (1998 cases)" (Gorse and Chadwick 2011, 2 and 16). However this must be read with caution since whilst doping is subject to extensive monitoring since the creation of WADA, the study obviously does not take into account undetected cases of betting and non-betting related match-fixing. Comparing doping cases with match-fixing cases on a one-by-one basis may also raise methodological questions: detected doping cases mainly concern an individual athlete whilst a single match-fixing case may involve dozens of different matches including several clubs and players (see for instance the 'Calciopoli' or 'Bochum' cases).

Screening systems may only detect a part of the problem; they can only find some types of irregular betting cases and many do occur undetected. The problem of match-fixing is most certainly undermining the integrity of sport. When trust in the unpredictability of a sporting result is lost – and it can be lost only as a result of one or two scandals – then the effect on sport and the values it carries is huge.

A closer look at the "Bochum" match-fixing scandal (Germany 2009) illustrates the cross-border as well as the economic dimensions of match-fixing. The police investigation team detected 323 suspicious matches (75 in Turkey, 69 in Germany and 40 in Switzerland). The persons involved in match-fixing were spread all over Europe: among the 347 suspects almost half of them were living in Germany (150), in Turkey (66), in Switzerland (29) and others in Croatia, Hungary, Austria, Belgium and Netherlands. Around 12 million euro were paid to referees, players, coaches and officials of sports federations in order to influence the results of matches (Council of Europe 2012) including "bonuses" of up to 1.75 million euro according to German police. During the investigation some accounts and account movements were detected in Germany, Malaysia, China, Isle of Man, Singapore, Russia, Austria, Turkey, Malta, the Netherlands and Slovenia (Lücke 2011).

1.3 MATCH-FIXING IN THE POLICY AGENDA

Council of Europe

As early as 2008, the 11th Council of Europe Conference of Sport Ministers responsible for Sport concluded with a Resolution on Ethics in Sports (Council of Europe/EPAS 2008). It mentioned among the new challenges to ethics in sport, the issue of match-fixing, corruption, and illegal betting, and invited the Council of Europe, through its Enlarged Partial Agreement on Sport (EPAS) to "draw up a new draft recommendation to Member States to help achieve integrity controls and a 'fair return' to sport for grassroots funding as regards betting". This was followed by a Resolution on Promotion of the integrity of sport against the manipulation of results (match-fixing) adopted during the 18th Council of Europe Informal Conference of Ministers responsible for Sport (Baku, 22 September 2010). The Baku Resolution inspired the Recommendation on the promotion of the integrity of sport against manipulation of results, notably match-fixing, which was finally adopted one year later, on 28 September 2011. The Recommendation acknowledges that match-fixing is a significant threat to the integrity of sport and invites Member States of the Council of Europe to adopt policies and measures aiming to prevent and combat the manipulation of results in all sports. It contains a detailed list of guidelines concerning issues such as definitions of the manipulation of sports results and the responsibilities of public authorities, sport organisations and betting authorities.

In the section concerning "legislative and other measures" the Recommendations calls on governments "to ensure that their legal and administrative systems are provided with appropriate and effective legal means for combating manipulation of sports results". It invites them to "review their existing legislation to ensure that: "manipulation of sports results – especially in cases of manipulation of competitions open to bets –including acts or omissions to conceal or disguise such conduct, falls within the remit of the national law and can be sanctioned in accordance with the seriousness of the conduct" and that "legal persons can be held liable for (this) conduct". It also stipulates that "Member states and sports organisations should work together to establish close co-operation involving exchange of information between law enforcement or prosecuting authorities and sports organisations". Significantly, the recommendation invited EPAS to conduct a feasibility study on an international Convention on match-fixing. Although the study has not been published yet it is very likely that negotiations concerning an international legal instrument on match-fixing will start in the near future.

European Union

Match-fixing has also attracted the attention of the European institutions in recent years, around a series of interrelated issues including: sport, gambling and corruption.

The first key European Parliament (EP) document to refer directly to match-fixing was the 2009 Resolution on the integrity of online gambling (Schaldemose report) which called for action to protect the integrity of sports competitions linked to betting (European Parliament 2009). Another resolution, also related to on online gambling was adopted end 2011 (European Parliament 2011b). This Resolution expresses the EP's concerns over links between criminal organisations and the development of match-fixing in relation to online betting. It focuses mainly on operational issues calling for instruments to increase cross-border police and judicial cooperation, dedicated prosecution services and exchange of information. It refers specifically to the recognition of property rights of sports event organisers in order to secure fair financial return for the benefit of all levels of professional and amateur sport and to *strengthen the fight against sports fraud, particularly match-fixing*. Similar concerns are expressed in the European Parliament's last Resolution on the European Dimension of Sport which "urges 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" – in particular so far as they refer to betting – and calls on the European Commission to tackle match-fixing "by establishing minimum rules concerning the definition of criminal offences

in this field". In recent years, Members of the European Parliament have raised the issue of match-fixing regularly, through written questions addressed to the European Commission⁴.

The European Commission has also expressed concerns. In its "Communication on sport" (European Commission 2011b), the Commission recognises that match-fixing violates the ethics and integrity of sport and identifies it as a form of corruption. It highlights its transnational dimension and although it acknowledges the monitoring efforts undertaken by betting and sport organisations it is hesitant about the results⁵. The Green Paper on online gambling launched a consultation on different issues including the manipulation of sports competitions linked to betting activities orchestrated by criminal organisations (European Commission 2011c). The recent Communication on Fighting corruption in the EU of June 2011 also mentions match-fixing (European Commission 2011e).

In addition the European Court of Justice has underlined that the development of online gambling significantly increases the risk of illegal activities linked to sport⁶.

As a response to the Communication on Sport, the Council of the European Union, adopted the Resolution on a EU Work Plan for Sport that identifies match-fixing as a priority theme and announces the creation of an Expert Group on Governance in Sport which will focus on, among other issues, match-fixing and must publish a set of recommendations by mid 2012. In November 2011, the Council Conclusions on combating match-fixing were adopted; the Conclusions observe that match-fixing, along with doping, is one of the most significant threats to contemporary sport and damages the image of sport by jeopardising the integrity and unpredictability of sporting competitions thus contradicting the fundamental values of sport, such as integrity, fair play and respect for others. The Conclusions address key aspects of the fight against match-fixing. In the framework of their respective competences it calls on the Commission, the Member states and/or the other stakeholders to adopt different measures that range from the setting up of educational programmes, to the promotion of information exchanges, the enhancement of international cooperation or the implementation of actions to increase awareness (European Council 2011b).

Initiatives put in place by sport organisations and betting operators in recent years are also fundamental in the fight against match-fixing. These can take the form of an "intelligence system"; ethical code of conduct; integrity units, or educational programs. The following paragraphs present a list of relevant initiatives adopted by sporting and betting stakeholders; this list is not exhaustive.

FIFA and UEFA were the firsts sporting bodies to establish early warning systems to detect betting related manipulation. The « Early warning system » GmbH, (EWS) was set up by the International Football Federation (FIFA) prior to the 2006 FIFA World Cup in Germany to monitor sports betting on all FIFA football competitions. The EWS works in partnership with national and international bookmakers and betting operators (400), who have agreed to report any irregular activities in sport betting. Besides that, the FIFA Code of Ethics, which entered into force in 2006, makes specific reference to betting, precluding officials, players and players' agents from, either directly or indirectly, gambling on football matches with which they are connected. In May 2011 FIFA entered into a cooperation agreement with the International Criminal Police Organisation (Interpol) to perform proper investigations on match-fixing cases with police resources and to intensify educational and training activities for federations and representatives of the police and investigative agencies working on match-fixing.

Like FIFA, the European football association (UEFA) also makes use of an early warning system (managed by the company Sportradar) which works with licensed gambling operators to detect suspicious betting patterns. UEFA also established a network of "Integrity Officers" across its member countries to coordinate action against match-fixers. UEFA's Regulations include disciplinary sanctions for those who act against the principles set up in

⁴ See for example Question for written answer to the Commission E-9585/2010 on 23 November 2010 by Cătălin Sorin Ivan, Question for written answer to the Commission E-001290/2011 submitted on 17 February 2011 by Iva Zanicchi (PPE), Salvatore Iacolino (PPE), Marco Scurria (PPE), Carlo Fidanza (PPE), Seán Kelly (PPE), Gay Mitchell (PPE), Santiago Fisas Ayxela (PPE), Piotr Borys (PPE), Cătălin Sorin Ivan (S&D) and Marc Tarabella (S&D), Question for written answer to the Commission P-012267/2011 on 21 December 2011 by Ivo Belet.

⁵ Vid. also Answer given by Ms Vassiliou on behalf of the Commission to question Question for written answer to the Commission Rule 117 Cătălin Sorin Ivan (S&D) Parliamentary questions, 7/1/2011, E-9585/2010.

⁶ ECJ, Case 42/07, Liga Portuguesa de Futebol Profissional & Bwin, ECR 2009, 7633, para. 63.

article 5 bis on "Integrity of matches and competitions". Under preventive measures UEFA is giving a series of presentations on the dangers of the manipulations of sports results at the Under-19 and Under-17 Championships. It also opened a special telephone line (integrity line) to encourage whistleblowing.

EPFL has adopted three initiatives – the EPFL Football Betting Manifesto, the EPFL Code of Conduct on Sports Betting Integrity and the EPFL Betting Operators Standards – addressed to prevent fraudulent betting practices in football.

In 2009, the International Olympic Committee (IOC) set up International Sports Monitoring GmbH (ISM) in cooperation with Interpol to monitor betting activities on Olympic Games. In addition to this intelligence system, the IOC's Code of Ethics (Articles A5 and A6) states 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 Olympics games, are prohibited."

The International Cricket Council (ICC) seems to be the first association to create in 2000 an Anti Corruption and Security Unit (ACSU) following a corruption crisis.

Since 2008, the professional tennis has its own dedicated anti-corruption unit (the Tennis Integrity Unit) and the World Professional Billiards and Snooker Association, since 2010.

EU Athletes has put in place a cross-border Sport Betting Educational Program –also involving PPF, ESSA, EGBA and RGA. The EU Athletes programmes reached 4,900 athletes in 2010 and targeted 8,500 athletes in 2011. Among other examples of training and education programmes on match-fixing one may list the Players Education Programmes now required in English football, the Tennis Integrity Protection Programme, the Sportaccord's Sports Betting Integrity Education Programme or the UEFA's Prevention program.

In 2005 a group of sports book operators created the European Sports Security Association (ESSA) with an early warning system to monitor irregular betting and inside betting and provide them with information as soon as they detect irregular betting.

The European Lotteries have signed memorandums of understanding with sports organisations and set up their own monitoring system (European Lotteries Monitoring System). In addition, the European Lotteries' Code of Conduct implements different mechanisms to fight corruption in sports and to promote responsible gaming (e.g. signatories are committed to refraining from competitions with high risks of corruption or when they are in a position to be potentially influenced).

Similarly, the RGA members have established memorandums of understanding with certain sporting bodies (i.e. UEFA and FIFA). The Code of Conduct (in co-operation with EGBA, ESSA and RGA) was designed as a set of principles, establishing common grounds to define the risks of sports betting and match-fixing.

Betfair and the IOC have recently partnered for the 2012 Olympics. Their agreement includes information and data exchange with the purpose of isolating irregular betting patterns.

1.4 FIGHTING MATCH-FIXING THROUGH CRIMINAL LEGISLATION

The need to fight against match-fixing is a response to perceptions of it as a public interest issue; match-fixing "jeopardises the integrity of the competitions, damages the social, educational and cultural values reflected by sports, and jeopardises the economic role of sports" (UEFA, November 25, 2011). Sports integrity must be protected from fraud in order to avoid doubts concerning the authenticity of results. Without the unpredictability inherent in fair play in sport it becomes unappealing to spectators, broadcasters and sponsors. Furthermore, match-fixing can be considered a form of corruption and as such must be sanctioned by criminal law (European Commission 2011b).

Agreements on the need to fight against anything which alters the unpredictability of outcomes in sport entail questions about the most efficient ways to fight against this phenomenon. Recent cases of sport corruption

show that this is no minor issue and that it should be combated with appropriate tools such as police expertise, phone-tapping, formal police interviews, prosecutions and trials. Resorting to criminal justice in the fight against match-fixing shows that sporting manipulation can be not only a 'simple' breach of sporting rules but also an offence against the public in a broader sense. In the field of doping the use of criminal justice mechanisms has resulted in an active fight against doping. Furthermore the application of an offence, whether general or specific, can facilitate the prosecution of perpetrators who are not members of the sports association concerned; sanctioning through sporting sanctions can only reach those directly involved in sport. Indeed, people who are "behind" match-fixing are commonly linked to organised crime, not the sports world. This raises the question of whether sports organisations are capable of tackling the problem of match-fixing alone (sport autonomy) or whether cooperation with public authorities and legislative intervention are necessary. With regard to cooperation, in some cases the police and public prosecution are already collaborating with sporting bodies and cooperation is not affecting independent sporting sanction systems, which include bans, relegations and penalties.

As suggested above, criminal sanctions and the establishment of a specific criminal offence in national law seem to have been the most effective deterrent to doping. Some commentators argue that this could apply equally to match-fixing. A range of different stakeholders have requested the establishment of a specific legal offence relating to match-fixing⁷. This is the route that some European Member States have already taken (see below sections 3.4–3.6). Also, in Australia a bill was recently introduced to add a provision on fraudulent sports conduct in the Criminal Code – *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*. Similarly, in Russia, it has been announced a proposal allowing the prosecution of match-fixing in the country (Sapa-AFP 2012)⁸.

⁷ So UEFA, FIFA or the European Parliament. KEA interview with Julien Zylberstein, EU Legal Affairs Advisor, UEFA – 05/10/2011, exchange of views with FIFA in November 2011, the European Parliament Resolution on the European dimension in sport (2011/2087(INI)).

⁸ This proposal received strong support from the Government and the new amendments might be introduced by the end of 2012. According to the Head of the Russian Football Union the new law would be a powerful weapon against this criminal offence as the existing laws only provide for limited opportunities to press actions against cheaters (Leadersinfootball 2012).

2. FIGHTING AGAINST CORRUPTION IN SPORTS – A REVIEW OF THE INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORK

2.1 INTRODUCTION

In the following pages, we refer to key pieces of international and European criminal legislation, in order to consider whether they offer the requisite legal backing to undertake proceedings against those involved in these criminal activities or, conversely, whether they reveal loopholes which make it difficult to prosecute match-fixing. We focus mainly on legislation and provisions which deal with corruption in the private sector. But as mentioned in the previous section, the manipulation of sports results has become an area in which criminal organisations may engage. Against that form of crime, we argue that it should be possible to use the necessary means to fight organised crime, and, in order to do so, incrimination has to be linked to serious offences. EU provisions dealing with money laundering will also be considered briefly.

2.2. INTERNATIONAL LEGAL FRAMEWORK

United Nations Convention against corruption

The main international instrument for tackling corruption is the UN Convention against Corruption (UNCAC), also known as the 'Merida Convention'⁹. The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption. Art. 21 refers to private corruption, both in its active and passive form. *Active corruption* is defined as the promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting. *Passive corruption* is defined as the solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting. In principle, these definitions are adequate to cover cases of sports corruption. However, the relevant provisions are not mandatory and signatories of the Convention are obliged only to *consider* the establishment of the above mentioned acts as criminal offences.

United Nations Convention against Transnational Organised Crime

In addition, the limited scope of the United Nations Convention against Transnational Organised Crime (2000), makes it difficult to apply directly to match-fixing; Art. 8 of the Convention requires parties to establish corruption as a criminal offence but refers only to public corruption. Once again, signatories have the freedom to establish other forms of corruption as criminal offences, but this is not mandatory.

⁹ This instrument, which opened to signatures in 2003, has supplemented existing international initiatives in the field. Although almost all the European Member States have ratified the UNCAC, the Czech Republic, Germany and Ireland have not yet done so. On 15 September 2005, the European Commission and the Council Presidency signed the Convention on behalf of the European Community. (Council Decision 2008a).

Council of Europe Criminal Law Convention on Corruption

The Council of Europe has developed a number of multifaceted legal instruments to deal with different aspects of corruption, such as the criminalisation of corruption in the public and private sectors and the liability and compensation for damage caused by corruption. These instruments include several conventions, guiding principles and recommendations¹⁰. The most relevant text, for the purpose of this study, is the Criminal Law Convention on Corruption which was adopted in 1998 and opened for signature by the Member States of the Council of Europe, and the non-Member States which had contributed to its development, on 27 January 1999.

The Criminal Law Convention on Corruption is an instrument aiming to coordinate the criminalisation of a large number of corrupt practices, among them active and passive bribery in the private sector. Accordingly, each party is required to adopt legislative and other measures to establish criminal offences under its domestic law pertaining to aiding or abetting the application of any of the criminal offences in accordance with the Convention. In addition, Member States are required to provide effective, proportionate and dissuasive sanctions and measures. The Convention also facilitates enhanced international cooperation in the investigation and prosecution of corruption offences.

Under the Convention, corruption in the private sector is deemed as an offence only when it takes place in the framework of commercial activity. This is restrictive, failing to allow for the diverse range of circumstances in which the manipulation of sports results can occur. For example, this definition could not be applicable to certain categories of sport competitions, especially when dealing with *amateur* sport. Moreover, relevant provisions are not mandatory; Art. 37 allows Member States, when signing the ratification, acceptance, adoption or accession instrument, to declare that they will not criminalise active and passive private bribery in the private sector.

In addition, on 28 September 2011, the Council of Europe adopted the Recommendation CM/Rec(2011)10 on the promotion of the integrity of sport against manipulation of results, notably match-fixing. The Recommendation contains a specific section on legislative and other measures, which requires Member States to ensure that their legal and administrative systems are equipped with the appropriate and effective legal means to combat the manipulation of sports results. In particular, Member States should review existing legislation to ensure that the manipulation of sports results, including acts or omissions to conceal or disguise such conduct especially in cases of the manipulation of competitions open to bets, fall within the remit of national law and can be sanctioned in accordance with the seriousness of the conduct.

The application of the international conventions to the manipulation of sport results

Following our examination of the scope of these texts we can conclude that they do not facilitate the effective application of sanctions against the manipulation of sport results. As we have seen, none of the relevant international conventions on corruption contain mandatory provisions on private corruption – aside from the additional problem of insider information. And the limited scope of private corruption in the Council of Europe Convention makes it difficult to apply the offence to *amateur* sports.

Although similar concerns have been expressed in the analysis carried out by the GRECO expert Drago Kos on the application of these international conventions to “match-fixing”, he reaches a different conclusion (Council of Europe/EPAS 2011a). In his opinion, the UN convention on organised crime is entirely applicable, and he argues that only minor cases, i.e. when match-fixing is undertaken by an individual, which is unlikely to happen when the crime has an international dimension, might not be covered by the provision.¹¹

¹⁰ For example, the Twenty Guiding Principles against Corruption (Resolution (97) 24). The Council of Europe has also targeted technical cooperation, such as the Octopus Programme against corruption and organised crime in Europe or the Paco Impact Programme that concerns the implementation of anti-corruption plans in South-Eastern Europe. Very importantly, in 1999 the Council of Europe established the Group of States against Corruption (GRECO) to monitor States’ compliance with Council of Europe anti-corruption standards through a dynamic process of mutual evaluation and peer pressure. One of the strengths of GRECO’s monitoring is that the implementation of recommendations is examined in the compliance procedure.

¹¹ However, we have already argued that according to its Art. 8 private corruption is not mandatory. It is worth noting that Drago Kos also states that the criminal offence of fraud exists in all national legislations and is defined in almost the same way in all countries. In his opinion, the definition of fraud

2.3 EUROPEAN UNION

In common with the international framework, there is no specific European legislation addressing the issue of the manipulation of sports results.

EU Sport competences

According to Art.165 TFEU, "the Union shall contribute to the promotion of European sporting issues, while taking account of the specificity of sports. Union acts shall be aimed at developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen". In this sense tackling match-fixing could be considered in the core of the EU competence in the sports field. However, one should bear in mind the limited scope of art. 165 TFEU that only allows for incentive measures and excludes any harmonisation of the laws and regulations of the Member States. In addition, the new Art.6 TFEU has added sport as a supporting competence of the EU, so that the Union can carry out actions to support, coordinate or supplement the actions of the Member States in the field of sport.

EU competences in the field of criminal (substantive) law

In relation to criminal matters, the Lisbon Treaty provides a new legal framework for EU institutions under which the EU has decisive power on sanctioning certain criminal offences.

The new article 83 TFEU states that the European Parliament and the Council can adopt directives establishing the minimum rules on the definitions of crimes and sanctions provided certain criteria are met. One of the possibilities is foreseen under Article 83 (1): directives can refer to serious crimes with cross-border dimensions, resulting from the nature or impact of such offences or from a special need to combat them on a common basis. According to Art. 83 the EU can legislate in the following areas, terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime¹².

It could be argued that Art. 83 may serve as a legal basis from which to establish a specific European crime in relation to the manipulation of sport results, as these activities constitute a specific form of corruption with specific criminal characteristics and with cross border implications¹³. Rules provided within the directive can relate exclusively to the minimum rules of definition of criminal offenses and of sanctions around manipulation in sport. As suggested by Chantal Cutajar, a directive adopted under this provision could harmonise European policy on the fight against match-fixing in relation to both prevention and detection measures.

The other legal possibility to criminalise an offence at EU level is provided by Article 83 (2) TFEU. The provision provides for adoption of minimum rules concerning the definition of criminal offenses and of sanctions if it is proved to be essential to ensure the effective implementation of a given Union policy area which has been subject to harmonization measures¹⁴. The requirement of pre-existing harmonisation measures has not yet been met in EU sport policy..

corresponds to the actual behaviour of perpetrators in match-fixing and covers all of them – those organising match-fixing and those exploiting match-fixing. However, the application of fraud to match-fixing is not straight forward. While in Germany there is a well established doctrine that considers the criminalization of manipulation of sports results under fraud offence in particular in relation to betting related match-fixing, in Italy, the doubts about the applicability of the offence of fraud triggered the adoption of a specific law (see below Section 3.7). And even in Germany it is not clear if the fraud offence would apply to all the cases of match-fixing (see infra section 3.3).

¹² This list is not exhaustive and the Council unanimously after obtaining Parliament's consent, may complete it in order to adapt it to changes in crime (Art. 83.1 para. 3).

¹³ The approximation is not limited to offenses that are cross-border in their components, but also covers those that, although committed in the territory of one Member State, are cross-border in the scope or the effects they may have on other Member States. (Flore 2009, 269).

Key legal texts

Framework Decision on combating corruption

The most relevant text in European criminal law, for the purpose of this study, is the Framework Decision on combating corruption in the private sector – Council Framework Decision 2003/568/JHA on combating corruption in the private sector of 22 July 2003– which aims to criminalise both active and passive bribery and establishes detailed rules on the liability of legal persons and deterrent sanctions. Under this law Member States are required to penalise certain acts which are intentionally carried out in the framework of business activities. The principle of incrimination is based on two autonomous offenses – active and passive corruption– which require a bilateral exchange between the benefits offered and the action requested (Flore 2009, 182).

Active private corruption Art 2.1 a) incriminates the fact of in the course of business activities, promising, offering or giving, directly or through an intermediary, to a person who in any capacity directs or works for a private-sector entity an undue advantage of any kind, for that person or for a third party, in order that that person should perform or refrain from performing any act, in breach of that person's duties. Regarding the recipient, the text requires that he/she 'directs or works for' a private-sector entity, but is not necessarily bound by an employment contract. The act of private corruption must be within the scope of professional activities and in breach of professional duties. The business activities covered by the scope of the Framework Decision cover both profit and non-profit entities. Passive private corruption, Art 2.1 b) incriminates the fact of, directly or through an intermediary, requesting or receiving an undue advantage of any kind, or accepting the promise of such an advantage, for oneself or for a third party, while in any capacity directing or working for a private-sector entity, in order to perform or refrain from performing any act, in breach of one's duties.

It is important to note that art 2.3 of the Framework Decision allows Member States to limit incrimination to conduct which involves, or could involve, a distortion of a competition in relation to the purchase of goods or commercial services. Member States who have opted for this possibility therefore have a more limited scope . This is the case for example in Germany and Italy where the offence is directed more towards market protection than towards the protection of specific companies (Flore 2009, 185). However, the Second Implementation Report on the Framework Decision 2003/568/JHA, adopted on 6 June 2011, clearly states that: "Under Article 2(3), four Member States had already made a declaration (DE, IT, AT, PL) in the previous report. The declarations were valid until 22 July 2010 (Article 2(4)). Under Article 2(5), the Council was to review Article 2 in due time before 22 July 2010 to decide whether such declarations could be renewed. As the Council took no such decision, the Commission considers that the declarations have expired and that *Member States need to amend their legislation accordingly*" (emphasis added).

Member States must ensure that active and private corruption in the private sector are punished by a penalty of a maximum of 1-3 years imprisonment and that legal persons can be held liable.

The first implementation report of the Framework Decision indicated that enactment in national legislative systems of Member States was very poor; Member States had failed to capture the true meaning of the elements of the offence (European Commission 2007). The second implementation report also showed limited implementation and only nine member states have correctly transposed all the elements of the offence (European Commission 2011e).

In the Communication on Fighting Corruption in the EU, the Commission (European Commission 2011d) "urges the Member States to fully transpose all provisions of Framework Decision 2003/568/JHA without delay and to ensure that it is effectively implemented. Depending on progress, the Commission will consider proposing a Directive replacing the Framework Decision."

As a form of corruption, the manipulation of sports results could fall under the scope of this Framework Decision¹⁴. But since the incrimination act of private corruption must be, as a minimum, within the scope of professional activities and in breach of professional duties, implementing provisions may not be applicable to non professional sports. In order to ensure that match-fixing is fully covered by the Framework Decision, its scope should be expanded to cover professional and non professional sports since both are affected by match-fixing and in particular by cross-national betting motivated match-fixing.

Framework Decision to fight organised crime

In 2008, the European Council adopted a Framework Decision intending to fight organised crime from its roots – Council Framework Decision 2008/841/JHA on the fight against organised crime, 24 October 2008. The Framework Decision looks holistically at the elements of organised crime and requires Member States to penalise this activity. In common with the above mentioned UN Convention, there are two types of conduct of which Member States must recognise one, at a minimum, as an offence. These are active participation in an organisation's criminal activities and agreement on the perpetration of crimes without necessarily taking part in committing them – Art. 2. Penalties include a maximum term of imprisonment of 2-5 years for the first offence, and a maximum term of imprisonment, equivalent to that of the planned activities, or of 2-5 years in the second – Art. 3. The liability of legal persons is also recognised – Art. 4 and 5– but, Member States are able to reduce, or allow exemption from, these penalties if, amongst other things, the accused provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain –Art. 6.

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

Another text relevant to this study, is Directive 2005/60/EC of the European Parliament and Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, which was established 26 October 2005. This Directive defines a global policy against money laundering and terrorist financing. Besides defining the constitutive elements of money laundering and terrorism when committed intentionally, it contains specific provisions intended to improve detection measures. Chapter 2 refers to the *surveillance obligation* to which the relevant or implicated professionals are subject, and Chapter 3 refers to the *obligation to report* illegal activities to the relevant authorities. However, the list of professionals bound by these provisions is too restrictive and does not apply to institutions which organise sports betting activities¹⁵.

Other competences in criminal matters

Beyond substantive provisions in criminal law, other instruments at the European level exist with potential relevance to the fight against corruption in sports and the manipulation of sport results, in particular.

Firstly, under Art 84 TFEU the EP and the Council can adopt measures to promote and support the actions of Member States in the field of **crime prevention**. This provision could be used to establish incentive measures to encourage Member States to take action against match-fixing, such as the exchange of best practices, adoption of financial programmes or incentives measures on the sharing of research and documentation. In the field of crime prevention, the European Crime Prevention Network (EUCPN) has been set up and, following the Stockholm

¹⁴ As it has been suggested by Ms Vassiliou in an answer to Parliamentary question E-001290/2011. Here, it is worth recalling some Member States have introduced a new sport corruption sanction through the law implementing the Framework Decision (see Section 3.5). This has been criticised by commentators who considered that the Framework Decision does not impose the criminalisation of match-fixing acts (Castro 2010).

¹⁵ According to Art. 2 "This Directive shall apply to: (1) credit institutions; (2) financial institutions; (3) the following legal or natural persons acting in the exercise of their professional activities: (a) auditors, external accountants and tax advisors; (b) notaries and other independent legal professionals, when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or execution of transactions for their client concerning the: (i) buying and selling of real property or business entities; (ii) managing of client money, securities or other assets".

Programme, the Commission is likely to propose to establish an Observatory for the Prevention of Crime (OPC) by 2013 at the latest (Peers 2011, 905).

One must refer to Europol and Eurojust with regard to police and judicial cooperation. The **European Police Office (Europol)**, established by the Europol Convention of 26 July 1995, and replaced by the Council Decision 2009/371/JHA of 6 April 2009, became operational on 1 July 1999. Material competencies of Europol cover transnational organised crime, including 25 types of offense, amongst these money laundering, swindling and fraud and corruption. The Decision defines Europol's competencies covering organised crime, terrorism and other forms of serious crime. This includes an Annex on crimes which affect two or more Member States in such a way as to require a common approach by the states involved, owing to the scale, significance and consequences of the offences, (Art. 4.1). However, despite having undertaken work to strengthen the operational aspects of its action, Europol is primarily a support service for Member State authorities, (Art.3).

Art. 88 TFEU, redefines the tasks of Europol, set out in earlier documents, and extends them by providing, under certain conditions, the power for Europol to undertake investigations and operational actions, (Art. 88.2.b and 3). This Article gives the legislator greater scope to refer tasks to Europol, particularly the coordination, organisation and realisation of operational actions. However, any operational action undertaken by Europol must be carried out in liaison and agreement with the Member State authorities, and the application of coercive measures continues to be exclusively a matter for national authorities (see Art. 88.3 TFEU).

Eurojust is another institution with key relevance to the prosecution of sports corruption affecting 2 or more Member States. The Eurojust mission is to strengthen judicial cooperation in criminal matters and promote the coordination of investigations and prosecutions between the competent authorities of Member States. Eurojust competences concern the same kind of crimes for which Europol is competent. For any other area of crime, it can act at the request of a Member State authority, (Art. 4 Decision of the Council 2002/187/JAI). Eurojust can request that the authorities of one or more Member State undertake an investigation or prosecution of specific events, set up a joint investigation team or provide the information needed to accomplish Eurojust missions. Member States are not, however, required to respond to these requests, but must justify refusal.

New measures announced in the Communication on Fighting Corruption in the EU are also relevant to this study (European Commission 2011d). The Commission's package of measures comprises a communication, a decision establishing the EU **anti-corruption reporting mechanism**, as well as a second implementation report on the Framework Decision 2003/568/JHA and a report on modalities of EU participation in GRECO. From 2013, the Commission will issue a report every two years to identify "failures and vulnerabilities" across Member States with regards fighting corruption. These anti-corruption reports will offer non-binding recommendations on anti-corruption practices. The Commission intends to establish a network of local research correspondents in each Member State, coming from civil society, academia and research, to gain insights into the state of play of implementation of anti-corruption policies.. The reports should also encourage more political engagement. The Communication also stresses the need to integrate anti-corruption considerations into all relevant EU policies. It makes specific reference to integrity in sport, and acknowledges that corruption in sport is an increasingly visible problem with cross-border dimensions, mainly related to opacity of transfers and match-fixing.

3. FROM CORRUPTION AND FRAUD TO 'MATCH-FIXING' OFFENCES – A MAPPING OF CRIMINAL PROVISIONS IN EU27

3.1 INTRODUCTION

The main objective of this study is to map criminal legislation in Member States which could be applied to the manipulation of sports results. This mapping exercise has been made possible with the information provided by participants in our three surveys, including representatives from different Member States, sporting associations and betting operators, as well as the interviews performed in the framework of the assignment. This data has been completed with desk-based research.

The picture in the EU is far from uniform. It is characterised by myriad solutions, which range from general offences referred to in common law or criminal codes, to specific and very detailed provisions dealing with sport offences. The first case relates to countries such as Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Romania, Slovakia, Slovenia, Sweden and the UK. In general, offences which could be applied to the manipulation of sports results include corruption, fraud or even cheating at gambling. Countries with specific "sport offences" include Bulgaria, Cyprus, Greece, Italy, Malta, Poland, Portugal and Spain. In France, a new law was adopted in January 2012 to include specific reference to the manipulation of sport events on which bets have been placed in the Criminal Code – *Loi n° 2012-158 du 1er février 2012 visant à renforcer l'éthique du sport et les droits des sportifs* –. Similarly, Sweden is considering a new law containing a specific crime focused on betting related match-fixing.

Beyond corruption, fraud or sports offences, other offences around financial fraud, conspiracy, organised crime or money laundering could be taken into consideration by criminal courts when dealing with the manipulation of sport results.

The following sections will describe the different models in Europe.

3. 2 CORRUPTION (BELGIUM, CZECH REPUBLIC, FINLAND, FRANCE, LUXEMBOURG, ROMANIA, SLOVAKIA, AND SWEDEN)

Transparency International (TI) defines corruption as the abuse of entrusted power for private gain. This definition differentiates between corruption 'according to rule' – where a bribe is paid to receive preferential treatment for something that the bribe receiver is required to do by law – and corruption 'against the rule' – to obtain services the bribe receiver is prohibited from providing. Corruption against the rule – bribes paid to alter the result or course of a sports event – is likely to be punished under the corruption provisions which will be analysed in this section.

Corruption can take place either in the public or private sector, but we only consider private corruption provisions in the following pages as these, according to our respondents, are more likely to be applied. However, it is worth noting that public sector corruption provisions could, in principle, be applied in relation to cases where public bodies were involved in sport results manipulation.

Countries in which corruption has been identified as the main offence in ongoing investigations or judicial proceedings on match-fixing include Belgium, Czech Republic, Finland and France. Other countries such as Luxembourg, Romania, Slovakia and Sweden are, according to the information provided by our respondents, likely to use corruption provisions to deal with cases of the manipulation of sport results¹⁶.

In **Belgium**, according to the most recent investigations and information provided by our respondents¹⁷, private corruption provisions are the most likely to be considered in dealing with cases of the manipulation of sports results – in addition to other accessory offences such as those concerning financial fraud, organised crime (Art. 324 bis and 324 ter Belgium Criminal Code), money laundering (Act of 18 January 2010) and extortion (Art. 461–462 and 468–476 Belgium Criminal Code). These were the exact charges considered by the prosecution in a case concerning the Belgium football league (Première division) during the 2005 and 2006 seasons when there was a scandal around betting related match-fixing cases linked to Asian syndicates. In total 18 matches, 31 people and one company were involved. Proceedings began in 2005 and a final decision is expected in September 2012 (La Dernière Heure 2012).

The private corruption offence has existed in Belgium since 1999 – *Loi relative à la répression de la corruption – Moniteur belge* – 23 mars 1999 –, when two new articles were introduced in the Criminal Code: Art. 504 bis and ter refers to active and passive corruption respectively. The corrupted person must be an administrator, manager, agent or employee of a legal person and must act without the authorisation of the Board of Directors or the General Assembly of an organisation (Dejemeppe 2002, 114). If authorisation has been given then the act cannot be considered under the provision. Penalties include prison sentences from 6 months to 2 years and/or a fine up to 10,000 euros; this can be increased to 3 years and/or 50,000 euros in cases where the bribe request is followed by an offer or where the bribe is accepted. In Art. 505 para. 2–4, the laundering of the financial proceeds of corruption is criminalised.

It must be noted that Belgium Law provides the Public Ministry with the opportunity to initiate a criminal procedure once it has knowledge of a crime, under the so called opportunity principle. This is the opposite to the principle of legality that is applied in other Member States which obliges Public Ministries to initiate proceeding provided there is enough evidence (Merle 1989, 31).

In 2009 a bill aiming at improve the monitoring of corruption and betting on football matches was introduced in Belgium – *Proposition de loi visant à organiser un meilleur contrôle de la corruption et des paris sur les matches de football*. Among other purposes, it intended to create a special unit to combat fraud in football.

In the **Czech Republic**, Art. 331 et seq. of the new Criminal Code on corruption are likely to be applied to cases of match-fixing. These provisions criminalise passive, active and 'indirect' (trafficking of influence) corruption. It must be noted that according to Czech legislation the offence refers to bribes given, promised, requested or accepted in connection with the procurement of items of *general interest*. According to the common provisions, this last expression must be understood as also referring to the preservation of obligations imposed by law or assumed by contract, whose purpose is to ensure that in business transactions no damage or unreasonable preference is shown by participants in these relationships or persons acting on their behalf.

Penalties for passive corruption include imprisonment, for up to 4 years, or the prohibition of activities. Active corruption is punished with imprisonment, of up to 2 years, or a fine. Higher penalties may be imposed if aggravating circumstances exist, and if the perpetrators commit the offence with the intention of procuring substantial benefit. This subjective element is not a *sine qua non* condition for the constitution of the offence.

Corruption provisions¹⁸ were applied and confirmed by the Supreme Court in the only case, to our knowledge, of match-fixing which acknowledged that sport was a matter of general interest¹⁹. In this case three club officials and seven referees were fined between 2,000 to 11,000 euro for giving and receiving bribes. The Court in Prague

¹⁶ According to the information provided by our correspondents and depending on the facts related to the specific cases, certain countries such as the Czech Republic or Finland, could consider other offences such as fraud. See *infra* section 3.3.

¹⁷ Questionnaire completed by Flemish Department of Culture, Youth, Sports and Media.

¹⁸ At that time arts. 160, 161 and 162 of the Criminal Code.

¹⁹ Decision TDO 510/2007, Supreme Court of the Czech Republic, 17 October 2007. Decision TDO 510/2007, Supreme Court of the Czech Republic, 17 October 2007. Vid also (EPAS 2011; Bures 2008).

increased fines and introduced conditional jail sentences for all people involved (Council of Europe/EPAS 2011b). All the club officials and referees, received similar sentences, including imprisonment of 8-14 months, fines of 30.000-150.000 CZK (1.200,72 EUR – 6.003,60 EUR²⁰) and disqualification for 3-5 years.

The **Finnish** Criminal Code punishes active and passive private corruption with a fine or imprisonment, for 2 years at the most; it is referred to in the Code as bribery in business and the acceptance of a bribe in business – sections 7 and 8, chapter 30-. It must be noted that private corruption provisions in Finland are drafted in quite general terms²¹ and that, as observed by Transparency International, this could present difficulties for prosecutors (Transparency International 2009, 329). However, our respondents did not identify any particular problems in applying these and other relevant provisions to match-fixing cases in Finland. Whilst corruption provisions would mainly be considered in cases in which players are offered monetary rewards to lose a match, fraud provisions are the most likely to be used with regard to criminal activities around betting and winning money on the fixed results²².

In Finland, there have been a number of well-known cases relating to match-fixing over the past ten years. Most of these cases have ended with some players and coaches being found guilty of fixing matches and/or defrauding the betting operator, Veikkau.s Oy. Recent court decisions concern the Nissinen case (2008), the Mitshuk case (2009), and The Wilson Raj Perumal case (2011). These three cases are all betting related.

In the first case, the team coach and a second person who had placed bets on manipulated matches were sentenced respectively to one year and one month and one year of conditional imprisonment for bribery in business activity and serious fraud. It was considered that the clubs whose matches were subject to manipulation attempts could be deemed as businesses, as required by the Criminal Code. In the second case, charges referred to accepting a bribe in business activities. This concerned a goalkeeper who had let in an easy goal during a match that had attracted extrange betting behaviour. An unaccounted for cash deposit was paid into the goalkeeper's account after the match. The goalkeeper was sentenced to conditional imprisonment of four months. The act was considered to have fallen under private corruption provisions, since the goalkeeper's club could be considered a business entity for which he was working, in line with the relevant provisions. In the third case, Wilson Raj Perumal, already convicted for match-fixing in the past, was sentenced to 2 years in prison in Finland for match-fixing. He was accused of bribing 11 players to manipulate matches in the Finnish League (The Telegraph 6.5.2011). Nine players were also found guilty and sentenced to conditional imprisonment from 5 months to 20 months (The Telegraph 7.5.2011).

Another prominent betting case, the so called Pesäpallo (Finnish Basketball) case took place at the end of the 90s. Seventeen people were sentenced to conditional imprisonment from 3 to 5 months, three people received fines – for having placed bets on the outcome of Pesällo matches with the knowledge that they had been fixed. Here the main offence considered was fraud.

In **France**, active and passive private bribery is punished with a prison sentence of up to 5 years and a fine of up to 75.000 euros. Articles 445-1 and 445-2 of the Criminal Code define private sector corruption not in terms of a commercial activity but as a set of criteria whereby those concerned are persons who do not exercise public authority, perform public duties or hold elective public office but who hold a managerial position or undertake other work, in an occupational or social capacity, for an individual or legal person or for any other body. The private sector is defined firstly in contrast to the public sector. The person concerned must not exercise public authority or perform public duties. Thus, persons operating in the private sector but performing public duties are covered by the offences in articles 432-11 and 433-1 of the Criminal Code. It is then made clear that the private sector is not confined to commercial activities but extends to all occupational and social activities, such as non-

²⁰ Conversion made in 10/02/2012 with European Central Bank Statistical Data Warehouse.

²¹ So, in section 7, chapter 30 on bribery in business (active private corruption) when referring to the purpose on the action it is written 'in order to have the bribed person, in his or her function or duties, favour the briber or another person, or to reward the bribed person for such favouring'. Section 8 on passive corruption is drafted in similar terms.

²² Questionnaire completed by the Finnish Ministry of Education and Culture.

profit activities. This wording also enables the legislation to cover non-profit making bodies. According to the legislation, those who perform or refrain from performing actions in accordance with or facilitated by their activities or duties, must do so "in breach of their legal, contractual or professional obligations". According to the respondents to our survey the provision does not cover all cases of corruption which could arise in the sports sector, particularly the bribery of *amateur* athletes or professional self-employed athletes (Villote 2011).

Article 445-3 of the Criminal Code provides for the following additional penalties: loss of civic, civil or family rights for up to 5 years; disqualification from public office or duties or the occupational or social activity in, or in connection with, the exercise of which the offence was committed (temporary – for up to five years – or definitive); confiscation of the object used in or intended for use in committing the offence, the direct or indirect proceeds of the offence and possessions the origin of which the offender is unable to justify; publication and dissemination of the decision handed down.²³

As highlighted by Transparency International and further explained by Chantal Cutajar, peer reviewer of this study, certain limitations do exist in relation to the prosecution of corruption cases.

"First, the limitation period is the general limitation period applying to infringements, i.e. 3 years. It being an instantaneous offence, it is consummated when all the elements needed to qualify it as such are gathered. The time limitation starts at that point, which does not necessarily concur with the moment the facts of corruption are discovered. Case-law has introduced some degree of flexibility in that it has postponed the start of the limitation period to the day of the last payment or last acceptance of the counterparts in the corrupt agreement²⁴. "Counterpart" is to be understood as the advantage granted, but also the act purchased, the decision or the abstention²⁵. In the case of fraudulent collaboration ("concert frauduleux"), the starting point is the day of the payment of the last instalment of the counterpart in the framework of the last agreement and this is also valid for the first agreement²⁶.

The second element relates to the establishment of a civil action in France. This action is a subsidiary to criminal action and relates to the civil liability of the perpetrator and to compensation for possible damages. In order to launch a civil action, the plaintiff must have been harmed directly, personally and actually as a consequence of the infringement. However, judges rarely accept that these conditions are all in place with regard to corruption cases. Nevertheless, the French Cour de Cassation has acknowledged a case in which a direct injury was suffered by a competitor who had lost procurement due to a corrupt act. Regarding sport results fixing, it might be possible for players who lost a match due to the fact that it was fixed to sue and claim for damages.

A third area of French law relates to evidence of the constitutive elements of corruption. In practice it was very difficult for prosecutors to build up a case to bring charges of bribery, and that to secure a conviction, they often brought other charges, such as misuse and concealment of the misuse of company property (Articles 241-3-4 and 241-6-3 of the Commercial Code), favouritism and taking unlawful advantage of an interest, often in conjunction with the notion of complicity. These offences are preferred because it is easier to prove that they have been committed than it is to establish bribery, thanks above all to the traces left by illegal financial flows and the fact that criminal intention can be deduced from the fact of the case. In the case of corruption prosecutions, however, there is always the need to establish the existence of an agreement, and even a prior agreement. Although certain prosecutors and investigating judge have sometimes become specialists in offences such as misuse of company property or favouritism, these offences probably do not apply to all cases of bribery, carry lighter penalties than bribery offences and do not carry the same negative image as do convictions for bribery.

France has recently approved an amendment to corruption provisions in its Criminal Code which relates explicitly to the punishment, under private corruption offences, of betting related match-fixing. The law N 2012-158 aims to strengthen the ethics of the sport and the rights of sportsmen by, among other things, adding two new

²³ The penalties for legal persons are: a. five times the fines payable by individuals, that is € 375 000; b. up to five years' disqualification from performing the activity in connection with which the offence was committed; judicial supervision; closure of the establishments, or one of them, in which the offence was committed; exclusion from public procurement; ineligibility for public funding; a ban on issuing cheques or using payment cards; confiscation of the object used in or intended for use in the commission of the offence, the direct or indirect proceeds of the offence and assets whose origin the perpetrator is unable to justify; publication or dissemination of the decision handed down, in accordance with Article 131-35.

²⁴ Cour de cassation, chambre criminelle, 13 décembre 1972.

²⁵ Cour de cassation, chambre criminelle, 9 novembre 1995.

²⁶ Cour de cassation, chambre criminelle, 8 octobre 2003.

paragraphs to corruption provisions in the Criminal Code concerning the criminalisation of betting related manipulation of sport results.

A new sports offence had been already proposed by the ARJEL Report (Villote 2011, 55) and was introduced in the parliamentary discussion by Monsieur Dupont²⁷. Although the ARJEL and Dupont's proposal had a wider scope because they referred to both betting and non-betting cases²⁸, the provisions which were finally adopted are more restrictive. The final version broadly responds to Amendment 18 which was presented by the Government. It was considered that a specific crime would facilitate investigations by public authorities, as well as having a dissuasive effect. In order to ensure legal certainty and increased legibility of these criminal provisions, it was argued that this new crime should be linked to an existing offence, in this case the private corruption offence. The principle of necessity justified, according to the proponents of the new provisions, the need to limit the scope of the offence to betting related activities²⁹.

To this end, two additional paragraphs have been added to the active and passive corruption offence in the French Criminal Code meaning that the penalties for active corruption will also apply to the following: a person who promises or offers any kind of gift or advantage for him/ herself or for others to an actor of a sport competition giving rise to sport gambling with the purpose of altering, by action or omission, the normal and fair course of the sport event or competition. A similar provision is proposed in relation to passive corruption. Under the new provisions, obstacles relating to the limited subjective scope of the provisions, mentioned above, seem to have been overcome. However, this provision will only be applied in relation to betting related cases; non-betting related match-fixing must be judged under the Criminal Code provisions on private corruption.

To date, the only known case of major jurisprudence concerning the manipulation of sports results in France relates to a football match between the French clubs Olympic de Marseille and Valenciennes, which took place on 20 May 1993. This incident was not connected to betting but to the qualification of the club. The Court of Valenciennes condemned the president of the Olympic de Marseille to 2 years imprisonment for active corruption of employees³⁰ and the bribery of witnesses (subornation de témoins), see Art. 434-15 CC. The Court

²⁷ Reasons behind the introduction of such offence are expressed in the Rapport n° 544 (2010-2011) de M. Jean-François HUMBERT, fait au nom de la commission de la culture, de l'éducation et de la communication, déposé le 24 mai 2011, concerning the Proposition de loi visant à renforcer l'éthique du sport et les droits des sportifs. It refers to the reasons expressed in the ARJEL report concerning the integrity and fairness of sport competitions:

« (...) L'idée d'inscrire dans le code du sport un délit pénal de corruption sportive est apparue dans le rapport de l'ARJEL relatif à la préservation de l'intégrité et de la sincérité des compétitions sportives face au développement des paris sportifs en ligne.

Selon ce rapport, plusieurs raisons peuvent militer en faveur de l'adoption d'un tel dispositif :

– il s'agirait de disposer d'un instrument adapté pour sanctionner des comportements clairement répréhensibles. En effet, les délits de corruption passive et active des personnes n'exerçant pas une fonction publique. Le délit d'escroquerie ou le délit de blanchiment constituent autant d'infractions qui pourraient être potentiellement, mais pas certainement, constituées par une manipulation de compétition sportive. A cet égard, on peut constater que plusieurs européens, où le sport a une grande importance (Royaume-Uni, Espagne, Italie), ont mis en place de tels délits, mis en oeuvre à plusieurs reprises ;

– l'instauration d'un délit pénal faciliterait la mise en oeuvre de moyens d'investigation spécifiques ;

– enfin la pénalisation de ce type de comportement revêtirait un caractère dissuasif à l'égard des potentiels corrupteurs et corruptibles. »

²⁸ So, art. 6 Article 6 sexes (nouveau). Texte de la commission n° 545 (2010-2011) déposé le 24 mai 2011, proposed to introduced in the Sports Code the following provisions :

« Art. L. 330-1. – Toute personne qui promet ou offre, sans droit, à tout moment, directement ou indirectement, des présents, des dons ou des avantages quelconques, pour elle-même ou pour autrui, à un acteur d'une manifestation sportive, afin qu'elle modifie, par un acte ou une abstention, le déroulement normal et équitable de cette manifestation, est punie d'une peine de trois ans d'emprisonnement et de 15 000 € d'amende. »

« Art. L. 330-2. – Tout acteur d'une manifestation sportive qui accepte des présents, des dons ou des avantages quelconques, pour lui-même ou pour autrui afin qu'il modifie, par un acte ou une abstention, le déroulement normal et équitable de cette manifestation, est puni d'une peine de trois ans d'emprisonnement et de 15 000 € d'amende. »

« Art. L. 330-3. – Tout acteur d'une manifestation sportive qui se concerte avec un autre acteur en vue de procurer ou de tenter de procurer à ce dernier un avantage injustifié en modifiant, par des actes ou des abstentions, le déroulement normal et équitable de cette manifestation, est puni d'une peine de trois ans d'emprisonnement et de 15 000 € d'amende. »

« Art. L. 330-4. – Les infractions prévues aux articles L. 330-1 à L. 330-3 sont punies de cinq ans d'emprisonnement et de 75 000 € d'amende lorsqu'elles sont commises en lien avec des paris sportifs. L'amende peut être portée jusqu'au double des sommes indument perçues. »

« Art. L. 330-5. – Les personnes physiques qui font l'objet d'une des sanctions prévues aux articles L. 330-1 à L. 330-3 encourent également les peines complémentaires suivantes lorsque l'infraction a été commise en lien avec des paris sportifs :

« 1° L'interdiction, définitive ou pour une période de cinq ans, du droit d'engager des paris sur des manifestations sportives ;

« 2° La confiscation du décuple du gain indument perçu. »

« Art. L. 330-6. – Les personnes morales qui font l'objet d'une des sanctions prévues aux articles L. 330-1 à L. 330-3 encourent :

« 1° Pour une durée de cinq ans au plus, les peines prévues aux 2° à 7° de l'article 131-39 du code pénal ;

« 2° La confiscation de la chose qui a servi ou était destinée à commettre l'infraction ou de la chose qui en est le produit, à l'exception des objets susceptibles de restitution ;

« 3° L'affichage ou la diffusion de la décision prononcée. »

²⁹ Discussion en séance publique au cours de la séance du lundi 30 mai 2011, Proposition de loi visant à renforcer l'éthique du sport et les droits des sportifs, adoptée en 1ère lecture par le Sénat le 30 mai 2011, TA n° 122

³⁰ According to former article 365 of the Criminal Code.

of Appeal of Douai sentenced him to 2 years imprisonment with a 16 month suspended sentence and a fine of 20.000 francs³¹.

In **Luxembourg**, Art. 310 -1 on active corruption in the private sector punishes corruption with penalties of up to 5 years of imprisonment and/or a fine up to 30,000 euro, this is similar to the Belgian text discussed above. Art 301-1 also pertains to anyone who directly or via an intermediary, proposes or gives a person who is the director or manager of a legal person, and an agent or employee of a person or a legal entity, an offer, promise or advantage of any kind for himself or a third party, or who makes an offer, promise or advantage of any nature for himself or for others to act or abstain from acting any duties of his office or facilitated by its function, without knowledge or authorisation of the Board of Directors or the General Assembly, the principal or employer. Art. 310 on passive corruption in the private sector could be applied to matches in the country. Due to its general scope, these provisions could cover a number of match-fixing scenarios. However it is uncertain whether they could be applied to cases involving a self-employed person or to amateur's sports. It should be noted that the elements of Article 246 and Criminal Code on passive bribery in the public sector, can also apply if the entity responsible for fixed competitions is a public organisation. Under Art 246 et seq. the perpetrator of corruption must be an entity or agent of a public authority or police, in charge of a public service mission or in a position of public office.

In **Romania**, perpetrators of the manipulation of sport events can be judged under the general provision 254 (passive corruption) and 255 (active corruption) of the Romanian Criminal Code. Once again these provisions refer mainly to people in managerial positions or other positions of power. It is worth noting that although the law uses the term official, this also includes people who perform tasks in the service of a legal person – as specified by Art. 147 of the criminal law. In this context, professional footballers and referees are considered to be officials, as was the case during the investigations carried out in relation to two match-fixing cases concerning the bribing of players and referees respectively (Council of Europe/GRECO 2009, 7). Unfortunately these cases are still in court and no decision has been pronounced yet. Problematically, certain participants in sport competitions, notably those who are not engaged on a professional basis or who are self-employed, might be exempt from this corruption legislation. According to Art. 255.3, the person giving a bribe is not deemed culpable if he/she informs the authorities about a bribe before criminal investigation bodies are notified of the offence, even if an offer is not accepted. Art. 6 of *Law on preventing, discovering and sanctioning of corruption acts* should also be taken into account since it refers to bribing people who may have influence over someone else. These corruption offences are tied to penalties of up to 10 (passive corruption) and 5 (active corruption) years of imprisonment.

In **Slovakia** those involved in the manipulation of sport events can be judged under the general provisions 332 (active corruption) and 328 (passive corruption) of the Slovakian Criminal Code. Penalties for corruption in Slovakia are lower than other referenced examples and include up to 3 years imprisonment for active corruption. Penalties for passive corruption are up to 5 years of imprisonment. It seems that in Slovakia, as in the case of Romania, passive corruption is considered to be more reprehensible than active corruption.

Similarly, current **Swedish** provisions regulate active and passive bribery with penalties of up to 2 years, 6 years for aggravated cases – Chapter 17, Section 7 and Chapter 20, Section 2, Swedish Criminal Code –, but this can only be applied to match-fixing cases involving club employees. In order to regulate active and passive bribery in connection to legitimate betting, the Government introduced a Bill in the first half of 2012 (Regeringskansliet 2012). These new provisions cover all actors from the public and private sector and self-employed people and, according to public officials, will also be applicable to professional athletes who try to bribe officials (The Local 2012). They regulate passive and active bribery actions relating to legitimate betting and target bribing which aims to influence the outcome of competitions in which commercial betting is taking place. As suggested by the Ministry of Justice, "the prosecutor must prove that an undue advantage has been received, accepted or demanded and that this has been done for the performance of his duties/tasks in the contest. Hence, it must prove the connection between the advantage and the performance of duties/tasks in the contest. The

³¹ Cour de cassation chambre criminelle Audience publique du 4 février 1997 N° de pourvoi: 96-81227 – Affaire OM-VA.

connection between the reception of the advantage and the performance of duties may only consist in the giver and the recipient having contact in the line of duty. The prosecutor does not have to prove that the advantage is in any way connected to a specific measure or that it has affected the conduct of the recipient. The required connection between the advantage and the performance of duties/tasks in the contest is therefore normally fulfilled as soon as the recipient is able to in any way affect or influence the giver.”³²

3.3 FRAUD (AUSTRIA, DENMARK, ESTONIA, FINLAND, GERMANY, HUNGARY, IRELAND, LATVIA, LITHUANIA, THE NETHERLANDS AND SLOVAKIA)

According to our research, fraud is the general offence which would typically be applied to the manipulation of sports results in Austria, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Latvia, Lithuania, the Netherlands and Slovakia.

However, a relevant *corpus* of jurisprudence and scholarly publications around the issue of criminal law and match-fixing only exist in **Germany**, where several court decisions have applied the crime of fraud to betting related match-fixing events. Fraud is punishable under section 263 StGB of the German Criminal Code. Section 263 punishes anyone with the intention of obtaining for himself or a third person an unlawful material benefit – who damages the property of another by causing or maintaining an error or by distorting or suppressing true facts – with up to 5 years imprisonment or a fine. In particularly serious cases the penalty is a prison sentence to 10 years³³.

Sect. 263 StGB defines fraud as the real intention of an individual to obtain for himself or a third person unlawful material benefit and damage to the assets of another – for example, of the betting operator and the bettors (Fritzweiler 2007, 711). The key element of the crime of fraud is therefore patrimonial damage. In the Hoyzer case (see below), the Court developed a specific category of detriment, the ‘Quotenschaden’, which can be translated as a ‘detriment caused by a shift of odds’ (Rotsch 2009, 91) and relates specifically to financial loss in sports betting. In similarity with the Bochum case, (see *infra*), it is key to consider whether there is damage to betting operators, regardless of whether manipulations have led to a defeat during the competition. What matters is that the betting operators would not have concluded a betting contract if they knew that intentional manipulation would take place (Fritzweiler 2007, 711). In both cases it was proven that the perpetrator misled the betting organisers and the referee and players were both considered to be implicated in the offence and to have committed the fraud as part of a gang.

The Bundesliga scandal was the first major case in Germany where the offence of fraud was considered in relation to the manipulation of sport results. This occurred in the 1970–71 season during a series of matches which were fixed to avoid relegation. The German Football Association (DFB) sanctioned 52 players, two coaches, six managers and the Bielefeld and Offenbach clubs. The case went to the Federal Court but all the accused were acquitted because it was considered that there was no financial loss to the detriment of the federation and financial loss was a necessary element for implementing charges of fraud. One commentator argued that the only offence for which they could have been prosecuted was perjury (sect. 154 StGB), for denying their involvement in the manipulation (Fritzweiler 2007, 715).

The second match-fixing case in Germany occurred in 2000. This was a betting related case involving Robert Hoyzer a German national-league referee, and Ante Sapina who was linked to betting mafia. They were convicted for 25 and 35 months imprisonment, respectively³⁴. At a later date, the Federal Appeals Court rejected the

³² As noted by Walo von Greyerz, Legal Adviser, Criminal Law Division, the Ministry of Justice, KEA European Affairs interview 07 February 2012.

³³ According to section 263.5 « An offense shall be deemed especially serious if the offender

1. Acts on commercial basis or as a member of a gang whose purpose is the continued commission of forgery or fraud

2. Causes a major financial loss or acts with the intent of placing a large number of persons in danger of financial loss by the continued commission of offences of fraud

3. Places another person in financial hardship

4. Abuses his power or his position as a public official or

5. Pretends that an insured event has happened after he or another person have for this purpose set fire to an object of significant value or destroyed it, in whole or in part, through setting fire to it or caused the sinking or beaching of a ship.”

³⁴ LG Berlin – judgement from 17. November 2005 – (512) 68 Js 451/05 Kls (42/05) – LG Berlin – judgement from 8. December 2006 – (512) 68 Js 451/05 Kls (25/05)

prosecution's request to overturn Hoyzer's convictions. Their main argument was based on the lack of a legal infrastructure for prosecuting match-fixing³⁵. The Bundesgerichtshof (Federal Supreme Court – BGH) ruled, on 15 December 2006 that fraud had taken place³⁶ and refused to reduce the penalties fixed by the district court of Berlin due to the financial loss suffered by the Federation and the loss of public confidence in the fairness of the sport³⁷. The German Football federation (DFB) introduced a lawsuit against Hoyzer requesting 8 million euros compensation for the damage caused to the whole of German football (Transparency International 2008).

Section 263 StGB was also applied in another betting case which ended with prison sentences for a Malay-Chinese national and a player.³⁸ Following the contestation of the sentence dating from August 31, 2007, the Landgericht Frankfurt am Main (District tribunal) sentenced a player to pay a fine³⁹.

The most recent case in Germany is the Bochum case which involves at least 32 matches in Germany and 200 in the continent, including three matches of the Champions League (Frankfurter Allgemeine Zeitung 2009). Three of the men implicated, described by the prosecutors Andreas Bachmann as 'enemies of sport' were sentenced in April 2011 by the Bochum District Court for to up to 3 years and 11 months in prison for trying to fix matches and bribe players⁴⁰.

In both the Hoyzer and Bochum cases the Court took into account the collaboration of the accused with the justice system to reduce the penalties.

It is worth noting that all the cases which resulted in convictions were related to betting. With regard to non-betting cases there may be situations where fraud is less likely to be applied (Fritzweiler 2007, 710). One could consider sections 299–300 of the Criminal Code concerning private corruption. However, they may be difficult to apply (they aim to safeguard free market competition) without a specific extension to cover the sport sector.

However, it is also worth noting, that corruption was considered in a case of the manipulation of sport results relating to handball. Charges of corruption and breach of trust were filed in 2007 against a former manager of THW Kiel, Uwe Schwenker, and a former trainer, Zyoni Serdarius. Schwenker was accused of having transferred 92,000 euros of THW Kiel money, to bribe the Polish referee in a match during the 2007 Champions' League Final (Frankfurter Allgemeine Zeitung 2010). On 21 January 2012 the Regional Court of Kiel acquitted them both, due to lack of evidence (Spiegel 2012).

Information from our respondents showed that in **Austria**, fraud penalties are most likely to be applied to the manipulation of sports results (Art. 146 and 147, Austrian Criminal Code). Fraud provisions in Austria contain a specific reference to "sport fraud" but this is limited to doping cases (Art. 147 (1a)). Penalties are a maximum of 3 years imprisonment and 10 years for very serious cases – if damage is up to 50,000 Euros. Austria has created specific police teams to deal with match-fixing (Meine Abgeordneten 2012).

As suggested above, in the **Czech Republic**⁴¹, fraud could also be considered in relation to match-fixing cases with penalties up to 10 years (Art. 209, Criminal Code).

Similarly in **Denmark**, Art. 279 of the Criminal Code covering fraud offences would typically be applied to the manipulation of sport results. In common with German Law, in order to be applied the provision requires false representation to induce a person to do/omit an act which involves the loss of property. Penalties are up to 1 and

³⁵ According to the declarations of the prosecutor: "That the behaviour which is being judged today is worthy of punishment, is without a doubt, in other words, every one of us says, that can not be allowed to happen, it should be punished, and I agree with that," "But it is another question as to whether we can punish it under the present laws, or whether we need another element of a crime (corpus delicti), or different rules of conduct for betting agencies, to prevent such manipulation. I am of the opinion that we can't punish it at present, even though there is a need for it, and so I have come to the result that the defendant should be acquitted." (ITN Source 2006).

³⁶ BGH, judgement from 15 December 2006 5 StR 181/06.

³⁷ BGH, judgement from 15 December 2006 pt. 56.

³⁸ As reported by the press "A William Bee Wah Lim placed 2.8 million euros with Asian bookmakers on the German club Kaiserslautern losing a first-division match at Hanover on november 2005. As a result of Hanover's 5-1 victory he won 2.2 million euros. Lim had contacts with players from Kaiserslautern, Karlsruhe and Sportfreunde Siegen, although the players have protested. Lim was sentenced to a jail term of two years and five months a court in Frankfurt summer 2007 after being convicted of attempted fixing of matches in the German regional league (then third division) and the Austrian first division. He was released on conditional bail of 40,000 euros but has since left the country. A warrant for his arrest was issued in January". Report: World Cup Match May Have Been Fixed". DPA News Agency 2008.

³⁹ LG Frankfurt am Main, judgment from 4 February 2009. 2 StR 165/08).

⁴⁰ Landgericht Bochum, judgement from 19 May 2011. 12 KLS 35 Js 141/10 – 16/11

⁴¹ Act No. 40/2009 Coll. of January 8, 2009.

6 months (Art. 285). However, the penalty may be raised for any prison term under 8 years where the offences are of a particularly aggravated nature, due to the manner in which they were committed; because they were committed by several associated people; due to the magnitude of the obtained or intended gain; or where a large number of offences have been committed (Art. 286 (2)).

In **Estonia** the crime of fraud (art. 209 Criminal Code) is drafted in much more general terms – applied to a person who receives material benefits by knowingly misrepresenting existing facts – and is punished with imprisonment of up to 3 years, 5 in cases of aggravating circumstances, such as large-scale activities or those involving a group or criminal organisation. Unfortunately, there is no clause in the law that could provide additional information on how it might be applied to the manipulation of sport events. According to the information provided by our respondents, in practice, it is understood that the sanctioning of a sports professional is the prerogative of sport organisations and sanctioning those external to sports falls under criminal legislation⁴².

In **Hungarian** law committing fraud pertains to someone who – for unlawful profit-making purposes – leads someone else into error or maintains error thereby causing damage (Art. 318 Criminal Code). Under the relevant provision penalties range from up to 2 years imprisonment to 10 years if particularly aggravating circumstances exist. Whilst fraud is less likely to be applied to betting offices in Hungary, in the case of players the act is governed as active or passive bribery committed by the breach of the worker of a company (Boros 2012)

The wording of the fraud offence in **Finland** is more in line with German and Danish provisions. Here, fraud is punished with a fine or imprisonment for 2 years, 4 in cases of aggravated circumstances (chap. 36 section 1–2 Criminal Code). For information on corruption offences as well as on case law see supra section 3.2.

Similarly, in **Ireland**, our respondents referred to the fraud offence (Section 6, Criminal Justice, Theft and Fraud Offences, Act 2001) which would be applied to any person who dishonestly, with the intention of making a gain or of causing loss to another, by any deception induces another to do or refrain from doing an act.⁴³ As reported by our respondent, deceit occurs when a person makes a factual misrepresentation, knowing that it is false (or having no belief in its truth and being reckless as to whether it is true) and intending it to be relied on by the recipient, and the recipient acts to his or her detriment in reliance on this act⁴⁴. The offence is punished with a maximum of 5 years imprisonment on conviction– 10 years for the dishonest use of a computer to make a gain (Section 9).

In **Latvia**, under section 177 Criminal Code, and in **Lithuania** under Art. 182 Criminal Code, the main offence considered in relation to match-fixing events is fraud. In **Latvia** penalties are up to 3 years imprisonment; a custodial arrest; community service, or a fine, provided this does not exceed 60 times the minimum monthly wage. Penalties can be higher in cases of aggravating circumstances. In **Lithuania** under Art. 182 Criminal Code, penalties are up to 3 years of imprisonment, or community service, or restriction of liberty or arrest. Penalty of 8 years can be imposed in cases of aggravating circumstances.

In the **Netherlands**, the manipulation of sport results can also be covered by the fraud provision and be punished with imprisonment up to 4 years or a fine. According to our respondents in the country, the current Criminal Code provides sufficient basis for combating match-fixing and sporting fraud.

Art. 221 of the **Slovakian** Criminal Code punishes the offence of fraud with up to 2 years imprisonment. In similarity with other countries, this must pertain to the loss or damage of property. It is worth noting, that according to Professor Tomas Grabis in the case of fraud, damage occurs particularly to athletes, who lose competitions because of the manipulation of results, as well as to sport associations and competition organisers or sponsors⁴⁵.

Fraud is regulated by Art. 211 **Slovenian** Code and can entail penalties of up to 3 years. From May 2012 it seems that bribing provisions could also be applied in relation to match-fixing cases thanks to the recent amendments

⁴² Questionnaire completed by the Estonian Ministry of Culture.

⁴³ Corruption provisions were also mentioned by our respondent although she commented that the legislation is not necessarily of particular relevance. Response to the questionnaire of the Department of Transport, Tourism and Sport of Ireland.

⁴⁴ Questionnaire completed by the Department of Transport, Tourism and Sport of Ireland.

⁴⁵ KEA European Affairs interview with professor Gábris Tomáš, Slovakia, Comenius University in Bratislava, Faculty of Law – 30/11/2011.

introduced in the criminal code which classify lucrative sport activities as commercial activities. In common with almost all the other countries discussed in this section, it seems that there is no jurisprudence in the country concerning match-fixing. However, in December 2011 formal charges were brought against several people in a case of betting related manipulation of sport events⁴⁶.

3.4 CHEATING AT GAMBLING (UK)

Other countries, in addition to the crimes referred to below, have offences which, whilst not focused on sport corruption/fraud, are directly linked to betting. This is the case in the United Kingdom, where there is a specific offence covering cheating at gambling.

There are several provisions in the UK which can be considered when dealing with the manipulation of sport results. For example, statutory corruption and fraud offences covered by the 2010 Bribery Act, and the 2006 Fraud Act. However, more importantly for our purposes, in 2005 the UK government passed the UK Gambling Act⁴⁷ which contains a specific offence addressing cheating at gambling, under Section 42. Amongst other specifications, the Act resulted in the establishment of the Gambling Commission, which has power to investigate, prosecute and void bets when there is suspicion of cheating (Nicholls 2011).

According to Section 42, a person who cheats at gambling, or does anything for the purpose of enabling or assisting another person to cheat (British Gambling Act, Explanatory Notes 2005) is liable to imprisonment for a term not exceeding 2 years, and/or to a fine. As specified in Section 42, Subsection 3, cheating at gambling may constitute actual or attempted deception or interference in connection with the process by which gambling is conducted, or a real or virtual game, race or other event or process to which gambling relates. Therefore the provision applies both to those who place bets illegally and to those who are involved in the betting related manipulation of sport events.

Under this Section, it is considered to be immaterial whether the person who cheats improves his chances of winning, or actually wins. As clarified by the Gambling Act Explanatory Notes, a person is considered to commit an offence irrespective of whether he actually gains anything as a result of the cheating, or whether the cheating has the effect of improving that person's chances of winning. This means that someone who cheats without securing gains, or someone who cheats on behalf of another person, is still considered to have committed an offence.

Although this act is considered as a model to be followed by other countries, it has been criticised, particularly in relation to the criminal provisions because of the difficulty in establishing a link between a bet and the incident which results in a fix (Forest and Green v Gray Athletic, 23 April 2010 cited in Nicholls 2011 par. 2.97) as well as the low penalties imposed⁴⁸. Moreover, because of the limited scope of the offence, the Gambling Act fails to deal with the integrity of sports⁴⁹.

In addition, under the 2005 Gambling Act, the Gambling Commission can provide information to certain bodies listed in Schedule 6 (notably sporting bodies) and alert them to suspicious betting activities surrounding sporting contests⁵⁰. This condition is viewed as a vital tool in preventing and detecting betting-related fraud. The Department of Culture, Media and Sport has recently announced amendments to the act which will facilitate the sharing of information and suspicions with the International Olympic Committee and other sports bodies that are

⁴⁶ Questionnaire completed by the Slovenian Sport Association.

⁴⁷ British Gambling Act 2005, 2005 c.19, came into force in September 2007. The legislation only covers Britain (Northern Ireland has its own gambling law, as does Gibraltar). Since the inception of the Gambling Act many online bookmakers have moved their business to the off-shore haven Gibraltar whereby they will be able to continue their operation outside the scope of the tax and anti-corruption laws of England and Wales. As a consequence of this they will not have to adhere to the above requirement under the Gambling Act (see <http://www.inbrief.co.uk/sports-law/betting-and-match-fixing.htm>).

⁴⁸ KEA European Affairs Interview with David Folker (Dataco), Mathieu Moreuil and Nic Coward (Premier League) 23/01/2012.

⁴⁹ *Id.* also Gambling. Evidence submitted by the Sport and Recreation Alliance (GA 20). UK Parliament Session 2010-21. Publications & records, www.publications.parliament.uk/pa/cm201012/cmselect/cmcmds/writev/gambling/m20.htm.

⁵⁰ In relation to the sport governing bodies it mentions: The England and Wales Cricket Board Limited, The Football Association Limited, The Football Association of Wales Limited, The Horseracing Regulatory Authority, The Lawn Tennis Association, The Irish Football Association Limited, The Jockey Club, The National Greyhound Racing Club Limited, The Professional Golfers' Association Limited, The Rugby Football League, The Rugby Football Union, The Scottish Rugby Union, The Scottish Football Association Limited, UK Athletics Limited, and The Welsh Rugby Union Limited.

not included in the list (UK Parliament, Session 2010-12, Written evidence submitted by the Department of Culture, Media and Sport (DCMS) (GA 79))– and has opened a public consultation on the issue. Also, since 2007, gambling licences have required operators to provide the Gambling Commission with information on suspicious criminal activities. The sharing of information between betting operators and sport organisations is based on voluntary agreements which seem unable to fully meet the expectations of all the stakeholders involved, in particular those of sport organisations⁵¹.

The Parry Report, commissioned by the Minister for Sport to make recommendations on a practical, effective and proportionate plan of action on sports betting integrity calls on the UK Government to review the definition of cheating in the Gambling Act and to reassess the 2 year maximum sanction (Sports Betting Integrity Panel 2010, 8, 13). Another recommendation proposes the creation of a pan-sports integrity unit located within the Gambling Commission, to ensure efficient investigation processes (id, 33 et seq.).

Court decisions concerning match-fixing in the UK are rare (in relation to football, Cox 2002, 71). The most recent case refers to spot-fixing in cricket in which three Pakistani players and their manager arranged no balls during Pakistan's Fourth Test against England in order to facilitate others to cheat at gambling. They were charged with conspiracy to cheat (Art. 42 Gambling Act) and conspiracy to obtain and accept corrupt payments (corrupt transactions with agents, as referred to under the Prevention of Corruption Act 1906 CHAPTER 34 6 Edw 7)⁵². All three players were convicted to prison sentences (from 6 months to 2.5 years) and the payment of fines (ranging from £8,120 to £30,937). The manager was convicted to 2 years and 8 months in prison and a fine payment of £56,554 (Southwark Crown Court, 03/11/2011 Case no. T20117139).

In the *Grobbelaar* case in 1994, two goalkeepers, a striker and a Malaysian businessman, were charged of conspiracy to corrupt, with the players involved in the manipulation of results for the benefit of a Malaysian syndicate. However, all the accused were acquitted in 1997 (Cox 2002, 72).

Another notorious case occurred in the 1960s when Jimmy Gauld and the three Sheffield Wednesday players, David Layne, Peter Swan and Tony Kay arranged the results of a match between Sheffield Wednesday and Ipswich Town in 1962, betting that their own team would lose. They were accused of the common law offence conspiracy to defraud⁵³. Further investigations involved more than thirty professional players, ten of whom received sentences of up to 4 years.

3.5 SPORT OFFENCES: SPORT CORRUPTION IN THE CRIMINAL CODES (BULGARIA AND SPAIN)

Models for a specific sport offence vary greatly; some countries such as Bulgaria and Spain have introduced a specific offence on the manipulation of sport results in their Criminal Codes, whilst others have inserted a specific offence into their sports laws, including Cyprus, Poland and Greece. A third group of countries have introduced a specific law to criminalise sports fraud these include Italy, Malta and Portugal.

In **Bulgaria**, corruption provisions go beyond general descriptions of corruption and criminalise the use of violence, deception, intimidation or other unlawful means to persuade another person to influence the development or outcome of a sporting event – New Chapter 8: Crimes Against Sport, art. 307, Bulgarian Criminal Code, August 2011. The relevant legislation also contains specific offences in relation to people who act as intermediaries.

⁵¹ Sport Organisations have asked the Gambling Commission to introduce mandatory obligations on the sharing of information and claim for information sharing binding agreements– KEA European Affairs interview with Mathieu Moreuil, Nic Coward (Premier League) and David Folker (Dataco) in 23 January 2012.

⁵² No bet was placed on the event.

⁵³ As defined in *Scott v Metropolitan Police Commissioner*, (1975) AC 818 (HL), conspiracy to defraud "it is clearly the law that an agreement by two or more by dishonesty to deprive a person of something which is his or to which he is or would be entitled and an agreement by two or more by dishonesty to injure some proprietary right of his, suffices to constitute the offence of conspiracy to defraud".

Penalties in Bulgaria are up to 6 years imprisonment for active and passive corruption and up to 3 years for mediators, although they may be up to 10 years when aggravating circumstances occur – for example when offences are committed relating to a participant in a sports competition who is under 18 years of age; to or by a person who is a member of a managing or controlling body of a sports organisation, or involving a referee, delegate or another person undertaking their official duties or functions. The punishment is imprisonment from 3–10 years if a crime has been committed by a person acting on behalf of an organised criminal group or if the crime involves betting on the development or outcome of sporting events.

Bulgaria has also amended existing provisions on illegal betting under Art. 327 Criminal Code⁵⁴, to ensure that the fixing of competition results by persons under the instruction of organised crime syndicates is considered as a criminal offence. Penalties of up to 10 years imprisonment are imposed if the acts involve betting on the progress or on the outcome of a sports competition.

As reported in the press, “a Bulgarian prosecutor confessed that before this law it was difficult to proceed even in proven cases because prosecutors did not have a ‘legal provision on which to act against match-fixing’” (The Sofia Echo 2012).

It seems that no specific jurisprudence exists in Bulgaria concerning match-fixing cases. In January 2012, after UEFA submitted reports outlining suspicions about match-fixing during the 2011–12 season, Bulgarian prosecutors started probing six Bulgarian league games for match-fixing. Six clubs are implicated (Agence France Press 2012).

The approach adopted by **Spain** is slightly different. The Criminal Code was modified in 2010 in the private sector and the Law 5/2010 established a new offence on private corruption which includes a specific modality in relation to sports. The law does not give any specific explanation of why Spanish policymakers adopted the new offence but some commentators, referring to the situation before the new offence was adopted, considered that the absence of a specific provision made it difficult to prosecute match-fixing cases and referred to the lack of efficient mechanisms to obtain evidence including interception of communications and monitoring bank accounts, (Cardenal 2010). However, this argument does not take into account the possibility of using other offences to punish the manipulation of sports results. Prior to the Criminal Law reform, fraud was the offence that would likely to be applied to cases of manipulation of sports results. Existing literature is not unanimous with regard to the suitability of the fraud offence for dealing with sport cases; whilst some authors considered it to be fully appropriate (Aguar 2007), others saw it as incomplete (Castillo 2010) (none of them giving convincing or detailed reasons). It is important to note that although the new offence has been generally welcome, it also has critics who consider that Criminal Law is not the most appropriate means to protect the integrity of sports (Castro 2010).

⁵⁴ “Article 327 (1). Any person who organises or conducts a game of chance in accordance with rules that are different from those set out in law shall be liable to custodial sentencing for between one and six years or else to a fine of between BGN twenty thousand and BGN fifty thousand.

(2) The penalties herein above shall be custodial sentencing for between two and eight years or a fine of between BGN forty thousand and BGN one hundred thousand where:

1. The offender is acting upon instruction or else in execution of a decision taken by an organised crime syndicate;
2. Persons under the age of 18 have taken part in the game of chance;
3. The offence is repeated;

(3) The penalties herein above shall be custodial sentencing for between three and ten years or a fine of between BGN eighty thousand and BGN two hundred thousand where the offence set out in Paragraph 1 herein above:

1. Constitutes an aggravated repeat offence or is otherwise seriously aggravated;
2. Involves betting on the progress or else on the outcome of sports competitions administered by sports organisations.
3. Any person who takes part in games of chance which are organised or conducted in a manner different to the manner set out in Law shall be subject to custodial sentencing for up to three years and a fine of between BGN one thousand and BGN five thousand.

Where offences set out in Paragraph 4 herein above are repeated then the penalties shall be custodial sentencing for between one and five years and a fine of between BGN five thousand and BGN ten thousand.

4. Any person who induces another person to commit certain offences set out in Paragraphs herein above, or else acts as an intermediary in the committing of such offences, shall be subject to custodial sentencing for up to three years and a fine of between BGN five thousand and BGN ten thousand, save where further aggravating circumstances may be present.

5. Monies and items which may be announced as prizes in games of chance shall be seized in favour of the State, and where they may be absent or have been removed, then the amount of such seizures shall be equivalent in value.

In the offences set out in Paragraphs 1, 2, 3, and 6 herein above Courts of Law may impose the confiscation of not more than a half of the estates of offenders.

6. Offenders set out in Paragraph 4 herein above shall not incur penalties where they voluntarily report offences set out in Paragraphs 1, 2, 3, and 6 herein above to due authorities’

The new Art. 286 bis 1 refers to active corruption and defines it as anyone who, directly or through an intermediary promise, offers or gives to directors, managers, employees or collaborators a benefit or an undue advantage of any kind so that that person or a third party, acts in breach of professional duties. Punishment includes 6 months to 4 years imprisonment, disqualification from 1 to 6 years and a fine of up to three times the gains obtained by the illicit activity. The same penalties can be applied to passive corruption, that is, in relation to a person that directly or through an intermediary, requests, receives or accepts an undue advantage of any kind. Art. 286 bis 4 explicitly states that this offence will also be applied to directors, managers, employees and 'collaborators' of sports entities as well as to athletes and referees in relation to conduct aiming to deliberately alter the results of professional sport events.

The new provision has been criticised because it does not deal with illicit sports betting (García J., 2010). According to some commentators, the Article does not apply directly to people, specifically bettors, who do not belong to one of the categories specified in the provision and who bribe a referee or a player. A bettor cannot be considered as a perpetrator of active corruption and it is uncertain whether he or she could be considered guilty for the aiding and abetting of passive corruption since they would only benefit indirectly (González 2010). The uncertainty in relation to the terms used in the definition of the provisions – particularly in relation to 'collaborators' – has also been criticized (id). The provisions do not apply to *primas a terceros* (money paid to win) because this requires an act against a professional obligation. It only applies to professional sports. According to Art. 288 the offence may also be applied to legal persons. The provisions refers to the intention of altering *results*, so in principle it cannot be applied to actions intended to alter the development of the event which can have no impact on the final results, for example the number of red cards.

Our research showed that there is no major jurisprudence in Spain dealing with the manipulation of sports results, either before or after the enforcement of new provisions. We only have only been able to gather information on one decision relating to match-fixing in which a case was dismissed because it was considered that the offence of fraud could not be applied (Audiencia Nacional, Auto 25-6-2002). However, from our interviewees and press monitoring we have obtained information on some recent cases. These refer to match-fixing in relation to football matches between Athletic de Bilbao vs Levante and Tenerife vs Malaga in the 2007/2008 season, and Unión Deportiva las Palmas vs Rayo Vallecano in the 2008/2009 season and four matches involving the Hercules (references in García, C. 2010). Although investigations were opened in all of these cases, it seems that they were closed because sufficient evidence of criminal activity was not found. It is worth noting that –according to the information accessed – only one case was betting related; that of Unión Deportiva las Palmas Rayo Vallecano in the 2008/2009 season.

3.6 SPORT OFFENCES: SPORT CORRUPTION IN SPORTS LAWS (CYPRUS, GREECE AND POLAND)

Other counties have opted to introduce a specific offence in their **Sports Law**; this is the case in Cyprus, Greece and Poland.

In **Cyprus** Art. 24 Law 41/69 on Sport Organisation, criminalises active and passive sport corruption. In relation to active corruption the law punishes the offer, giving or promise, to an athlete, friend or relative of his or to a club or its Council, or a member of that club or Council, of achieving more favourable results for his or her club against its competitors. According to the definition provided in the Article an 'athlete' is any person involved in sports activities regardless of whether he or she is a member of a club, and 'club' would include any club or organisation established legally in the Republic aiming to promoting physical education and sport outside schools, the term includes gymnastic clubs. Therefore, one can conclude that the subjective scope of the provision is wide in comparisons with the applicable provisions in other European countries. The opposite can be said in relation to objective elements, which cover only manipulation to achieve more favourable results for a club and against its competitors; manipulations at any other phase of a game are beyond the scope of the provision. Penalties are up to 2 years imprisonment, 3 if the act affects the object. According to the information provided by our respondents there is no relevant jurisprudence dealing with the application of this provision.

Greece also has a specific provision in its Sports law. Thus, Art. 132.1 and 2 Law 2725/1999 considers active and passive bribery with the purpose of manipulating results in favour of a club, an Athletic Societe Anonyme (AAE) or a Remunerated Athletes Section (TAA) as a misdemeanour. (art. 132.1). Both active and passive corruption are punishable with penalties of at least 3 months imprisonment. This may be increased to 6 months in cases where the perpetrator achieves the intended results. The scope of the provision is limited to the alteration of results in favour of a club, a AAE or a TAA. In common with other countries, the law contains exonerating provisions for those who provide information on the sports crime. It specifically refers to the necessary autonomy and independence of the criminal and disciplinary proceedings in case persons involved are sportsmen – athletes, coaches, trainers, administrative agents or members of sports clubs, TAA or AAE– (132.5). It must be noted that Greece is currently considering a new law to modify Art. 132 Sports Law in order to include specific provisions on online betting.⁵⁵ Betting related match-fixing will be considered a felony punished up to 10 years of infringement.

According to the information provided by our respondents there is no relevant jurisprudence dealing with the application of this provision in Greece⁵⁶. After investigations launched by UEFA showed that at least 40 matches were fixed in the country during the 2009–2010 season (Financial Times 2011), 68 suspects (club presidents, club owners, players, referees and a chief of police) were listed by judicial authorities on 24 June 2011. It is important to note that this investigation concerns offences including illegal gambling, fraud, extortion and money laundering (BBC News 2011, June 25). Some clubs were relegated and excluded from the Europa League play-off round by UEFA and some officials received a lifelong ban from any football-related activity (Phantis 2011).

Poland has had a specific offence on sport corruption since 2003 when the so called "anti- corruption amendment" to the Polish Criminal Code introduced a new article 296b concerning professional sport corruption⁵⁷. Before that, general provisions on corruption applied in Poland, notably articles 228–230 Criminal Code. According to our national respondent, the application of those provisions was far from straight forward: "it turned out to be a challenging task to prove that persons/people involved in match-fixing, in particular athletes, hold a public function"⁵⁸.

As explained in the Justification to the Draft Law of 2003, the reasons why the legislator adopted a specific offence concerned "the lack of criminal law reaction to the pathological phenomena in professional sport.". Placing the provision in the special part of Polish Criminal Code dealing with 'economic crimes' indicated that the main reason for criminal law protection related to the integrity of commercial relations in the world of sport. However, according to some commentators the regulation also recognised this criminal activity as an offence against

⁵⁵ Αντιμετώπιση της βίας στα γήπεδα, του ντόπινγκ, των προσυνεννοημένων αγώνων και λοιπές διατάξεις, 22/12/2011 ('Facing of violence in the grounds, doping, match-fixing fights and other provisions' – as translated by the Office of the Secretary General of Sport, of the Ministry of Culture of Greece).

⁵⁶ Our respondents only referred to minor decisions always for sporting reasons. Unfortunately they were not able to provide us with further references or additional data. Questionnaire completed by the Ministry of Culture and Tourism, KEA interviews with Kyriakos Korolis, Greece, Ministry of Culture and Tourism – 19/1/2012.

⁵⁷ § 1. Any person who, holding a professional sport event or taking part in such an event, accepts a financial or personal advantage or a promise thereof in exchange for unfair behaviour, which may affect the result of the competition, shall be liable to the penalty of imprisonment for a period not shorter than 3 months and not longer than 5 years.

§ 2. Any person who in the cases referred to in § 1 above gives or promises a financial or personal advantage shall be liable to the same penalty.

§ 3. In the case of a less serious crime, the perpetrator of the act referred to in § 1 or § 2 above shall be liable to a fine, restriction of liberty or imprisonment for a period not longer than 2 years.

This regulation protects the fairness of sport competitions, which should be held in compliance with the legal regulations and the rules of sport competition provided for a given type of competition.

Article 296 b § 1 of the Polish Penal Code (passive bribery)

The perpetrator of this corruption crime can be both the organiser of a sport event (e.g. president of a sport club) and a participant (e.g. a competitor or a referee), who is liable for behaviour consisting in accepting a financial or personal advantage or a promise thereof in exchange for unfair behaviour (against the rules), which may affect the result of the competition.

The very fact of exposing a competition to distortion of results is punishable; the law does not require the consequence, i.e. distortion of the result, to actually take place (e.g. regardless of unfair behaviour of the corrupt competitor, the competition result is different than the one agreed).

Article 296 b § 2 of the Polish Penal Code (active bribery)

The perpetrator of active bribery in sport can be anyone who, in exchange for unfair behaviour that may affect the result of the competition, gives or promises to give a bribe to either the host of the events or a competitor.

Article 296 b § 3 of the Polish Penal Code

Both active and passive bribery in professional sport competitions can constitute a less serious crime.

In such a case the law provides for a more lenient penal sanction.

The civic anti-corruption charter. (Certified translation from the Polish language), December 2005, available on http://szczecin.pa.gov.pl/files/The_Civic_Anti-Corruption_Charter_1265805850.rtf . Article 296b of the Criminal Code was deleted when new Act on Sport came into force.

⁵⁸ Response to the questionnaire submitted by the Polish Ministry of Sport and Tourism.

public order. As suggested by Radke 2008, the unique role that sports plays in society justifies both points of view.

Unfortunately, the 2003 provisions were not precise enough. They only criminalised undue influence on the course of a sports competition, caused by people taking part or organising that competition. It was not clear whether the activity of referees and officials, not involved directly or indirectly, in organising the competition could be penalised. This motivated a new change in Polish legislation and an integral law concerning sport, protection of fair play and protection of correct conduct was considered necessary to address the corruption which had occurred in recent years. This decision was no doubt prompted by the organisation of the Euro 2012. The law is intended to include the necessary adjustments to the criminal code and to extend punishment to all dishonest behaviour that could influence sport competition results.

On 25 June 2010 specific criminal provisions on combating match-fixing and corruption in sport were introduced in Chapter 10 (Art. 46-49) of the newly adopted Act on Sport. In accordance with the new provisions, the following sport criminal offences were introduced: private and active corruption (Art. 46); insider information activities (Art. 47) and trafficking of influence (Art. 48). Penalties for active and passive sport corruption as well as trafficking of influence go up to 8 years of imprisonment, in the case of private corruption. Sentences can reach 10 years imprisonment if material benefit is significant. Significantly, Poland has also introduced specific provisions on the betting related manipulation of sports results, with particular relation to insider information. Thus, Art. 47 punishes, with up to 5 years imprisonment, those taking part in betting activities and possessing information regarding the commission of sport fraud or disclosing information with the aim of encouraging someone else to participate in betting activities. Finally, it is worth recalling that Art. 49 exonerates those who have accepted a bribe and immediately notify the police from punishment.

Contrary to our conclusions in relation to other countries, a considerable number of decisions have been identified in Poland in recent years, particularly since 2004. According to the information provided by our national respondent, 2003 provisions led to the opening of numerous investigations in relation to which more than 600 people have been accused of match-fixing. Most cases are still under investigation.

Amongst the recent cases in Poland, the following examples can be referenced:

- In 2006, in relation to the so called case of Polar Wrocław, four football players were sentenced for corruption; Jacek S. and Tomasz R. were sentenced for receiving bribes from the football payers of Zagłębie Lubin to 15 and 18 months of imprisonment respectively; Marek G. was sentenced for receiving a bribe and insisting on the acceptance of a bribe and was sentenced to 20 months of imprisonment; and a former football player of Zagłębie Lubin was sentenced to 1 year of imprisonment for participating in the giving of a bribe to football players from Polar Wrocław. All these sentences were 5 year suspended sentences (Gazeta 2010).

- In 2007, in relation to the case of Arka Gdynia, 17 people, among them football supporters, observers, a referee and a football-player, were accused and found guilty. Penalties of between 2 years and 4 were imposed on the ex-President, the official and two ex-members of the Board (Pilkarskamafia 2009). In addition, the official was accused of having established and led an organised criminal group which was receiving, giving and acting as an intermediary in the transfer of bribes. In 2011, the final sentence for 111 cases of corruption was announced against the referee (Eurosport 2011).

- Considerable penalties were also imposed in the case of Korona Kielce (2008). Amongst others, the coach of the club was sentenced to 3 years imprisonment, with a 5 years suspended sentence, a fine of 100.000PLN and a ban from any position in professional sport for 3 years. His assistant was sentenced for 2 and a half years imprisonment, with a 3 year suspended sentence, fine of 30.000PLN and a ban from holding an official position in professional sport for 1 year (Eurosport 2009).

- In 2010, in the case of Górnik Polkowice, 27 people including football players were accused of buying matches. They accepted voluntary sentences. The Court of Lubin prosecuted them and imposed significant penalties, including imprisonment (TVP 2011).

– In 2010, in relation to the case of KSZO Ostrowiec Świętokrzyski / Ceramika Opoczno / Stasiak Opoczno (2010), sentences for corruption from 8 months to 3 years of imprisonment were given, with suspension from professional practice for 2–5 years.⁵⁹

– In 2011, in the case of Motor Lublin, 39 people were sentenced by the Court, including coaches, sport supporters, PZPN observers and football payers. The corruption concerned 33 matches in the Third Division during 2003–2005. The most important sentence was for the Director and coach, who received 3.5 years of imprisonment, with a 6 year suspended sentence, the fine of 20,300PLN and 8 year ban from a position in professional sport (Lubelski Kurier 2010).

3.7 SPORT OFFENCES: SPORT CRIMINAL LAWS (ITALY, MALTA AND PORTUGAL)

Italy introduced a specific law on sport fraud, law 401/1989, covering the gaming sector, illegal betting and the protection of the running of competitions. The purpose of the law was to fight against illegal sport betting which showed increasing links to criminal organisation, particularly around betting activities (Erede 2009), according to the Report accompanying the bill, the main purpose of the new law was to safeguard fair play in sport competitions (Erede 2009). The law also intended to simplify provisions relating to betting by introducing a new offence concerning illegal betting and violence in sports. These measures were in response to the difficulties in prosecuting match-fixing cases under the fraud offence contained in 640 of the Criminal Code⁶⁰. It was considered that key elements of the offence, such as ‘false representation’, the identification of the passive subjects, or more importantly the causal link between all the elements of the offence, were unlikely to exist in relation to match-fixing cases (Musco 2001).

Art. 1 punishes with imprisonment from 1 month to 1 year and a fine from 250 to 1000 euro anyone who offers or promises money or other benefits or inducements to any participant in a sports competition organised by any association recognised by the Italian National Olympic Committee (CONI), the Italian Horse Breeding Union (UNIRE) or any State-recognised sports body and its member associations, in order to achieve a result that is different from that resulting from fair and proper competition. Similar penalties are defined for passive actions, covering those who request or accept benefits. It is worth noting that whilst this provision refers expressly to active and passive sport corruption, the general expression ‘other fraudulent activities’ can be applied in cases where the definition ‘corruption’ seems to be too restrictive (Erede 2009, 9–15), for example, in relation to doping cases⁶¹. All in all, it should be understood that the remit of the expression covers offences and false representation (Colantuoni 2007, 199).

In Italy, this crime is considered as a ‘formal crime’ so that it does not require the results to be substantiated – neither requires the alteration of the results nor the acceptance of the offer by the participant to be consummated (Cueva 2010, 57). The law does not specify the meaning of ‘other benefits’. According to the doctrine it is not limited the economic advantages but may refer to advantages of any kind (Musco 2001, 84).

The scope of the law is limited to official competitions organised by specific sports bodies. This limited scope has led some commentators to criticise it. According to Vidiri, the objectives of the law are more related to protecting the specific competitions organised by a public body rather than guaranteeing fair play in sport. He also considers that a key objective of the law pertains to financial profits/returns from betting operators (at that time public betting operators) on these events (Colantuoni, 2007, 199).

⁵⁹ According to the information released by the press: Mirosław S. was condemned to 3 years of imprisonment with suspension for 4 years and 195,000PLN of penalty, Mariusz Ł. to 2 years and 8 months of imprisonment with suspension for 4 years and, 51,000PLN of penalty, and Piotr K. to 2 years of imprisonment with suspension for 3 years, 20,000PLN of penalty and interdiction of organisation of professional sporting competitions for 8 years period. Pilka 2011.

⁶⁰ For a detailed explanation of the reasons that lead the Italian doctrine to consider that the offence of fraud is not applicable to manipulation of sport results cases see: Musco 2001.

⁶¹ It was on the basis of this provision that in December 11, 2000, the Italian cyclist Marco Pantani was sentenced to three months in jail with a suspended sentence and a fine for doping with the aim of distorting the Milan–Turin race in October 1995. The following year he was acquitted by the Court of Appeal of Bologna, which considers that the ‘facts were not legally considered as an offense’. Sport 2001.

The specific intention of an offence is defined as the subjective element, here, with the aim of producing a result, different to that arising in the normal course of a competition (Erede 2009). In the light of this it seems that when manipulation refers to a certain phase of the competition, rather than influencing the final result, it falls beyond the scope of the article.

While the law does not provide a definition of participants and competitors, beyond players, referees and officials, the doctrine is not unanimous when discussing whether other professionals such as trainers, managers, doctors, physiotherapist, etc. fall under its definition (Vidiri 1992, 649; Musco 2001, 84; Colantuoni 2007, 199). In any case, it seems that managers or trainers could be punished under the more general acts relating to fraud (Colantuoni 2007, 199).

The sanctions linked to Art. 1 include imprisonment from 1 month to 1 year and a fine from 250 to 1000 euros, the fine is only applied in mild cases. However, this maximum of 1 year imprisonment and a fine of 1000 euro have been considered by some commentators as insufficiently dissuasive (Villote 2011).

In an aggravating circumstance, when the results of a competition influence the course of regularly organised betting activities, penalties may be increased to up to 2 years imprisonment and fine of up to 25,000 euros (art. 13). It is worth noting that the Italian doctrine also discusses whether this provision really covers autonomous crime or simply aggravating circumstances (Colantuoni 2007, 199).

In addition, Art. 4 contains an offence which could be applicable to betting related cases. It provides criminal sanctions in cases of unauthorised operation of the lottery, games and bets reserved to the State or other concessionaires and the unauthorised operation of bets on sports events organised by C.O.N.I. or U.N.I.R.E.

Art. 3 includes an obligation to report the facts concerning the criminal offences referred to in Art. 1. This obligation concerns the President of the national sport federations affiliated to CONI. Thus, the provision introduces cooperation among sport organisations and the state which facilitates the prosecution of criminal activities. In contrast to Maltese provisions, see below, the law does not establish specific sanctions in cases of non-compliance with this provision, however it may be argued that the penalties specified in Art. 361 Italian Criminal Code could be applied (Ferretti 2005).

Art 5 establishes accessory penalties including, the prohibition of access to places where sport competitions or legal betting take place. In addition, those convicted for sport fraud are not allowed to hold positions in sport associations.

Provisions concerning *associazione a delinquere*, have also been considered to inculcate certain people involved in the 'calcioscommesse' affair. The offence is contained in Art. 416 of the Criminal Code aiming to punish the association of three people who intended to commit criminal offences. The reference to Art. 416 is extremely important, since in Italy the interception of communications is only possible for certain kinds of crimes, notably for those with penalties higher than 5 years imprisonment. Penalties under Art. 1 of the act 401/89 would not justify the adoption of such measures (Colantuoni 2007, 205).

Italy has been regularly affected by match-fixing cases which originate in betting. This was the case of the so-called 'Totonero' scandal in the 1970-80's, which involved football players from the First Division (A) and the Second Division (B) who bet on the outcome of a match in which they were playing, creating serious conflicts of interest. Seven clubs were retrograded, sentenced for penalties (fined) and around twenty football players were suspended or imprisoned (Tiscali 2011).

In 2005, in a case of a sport fraud known as 'the Genoa case', the football club of Genoa was accused of having illegally influenced the outcome of a Second Division (B) match during the 2004-2005 season in which the club won against the club of Venice and as a result joined the First Division (A). During an investigation on illegal betting two judges provided the sports justice authorities with the necessary information to conduct a trial concerning the Genoa vs Venice match under the "associazione a delinquere" (criminal association) offense (art. 416 of the Criminal Code), as the offence of fraud in sport competitions would not have allowed phone tapping to be considered. Several months later the category of offence was changed. Enrico Preziosi president of the Genoa Football Club, Matteo Preziosi, relative and collaborator of Enrico Preziosi and Stefano Capozucca, the

sport director of the club, were tried for offering approximately 250,000.00 euros to managers of the Venice Football Club, and an undisclosed benefit or other benefits to the players of the same club. In February 2007, the prosecution requested 8 months detention for 6 of the accused. On 2 March 2007 (Corriere della Sera, 2007), the Genoa court sentenced five defendants to 4 months imprisonment and a fine of 400,000 euros each for sporting fraud (Law 401/1989 Art. A al. 1.2.3). On 27 November 2008, in an appeal the court confirmed the sentence. The case was then transferred to the Supreme Court, which on 25 February 2010 quashed the November 2008 decision, enabling the transfer of the case to another section of the Appeal Court of Genoa⁶². The second appeal decision, on 15 February 2011 (Affaritaliani, 2011), confirmed the sentence of 4 months imprisonment for Enrico Preziosi and the acquittal of the three other defendants.

In 2006, in the so-called "Calciopoli" case, five clubs in the First Division (A) were at the centre of a scandal concerning the appointment of referees in matches during 1999–2005. Some clubs were relegated to the Second Division and others were stripped of points. Phone tapping also revealed the involvement of another club in the First Division (A), but because the limitation period expired the Club was not prosecuted (Goal 2011).

In November 2011, Luciano Moggi, the former general manager of Juventus Turin, was sentenced to 4 years and 4 months of imprisonment in the criminal trial of 'Calciopoli 2006', and the presidents of Fiorentina, Andrea della Valle and the President of Lazio, Claudio Lotito, were sentenced to 15 months each. The President of the club Reggina, Pasquale Foti, was sentenced to 18 months imprisonment and the President of Fiorentina, Diego della Valle, was sentenced to 15 months. The former referees, Paolo Bergamo and Pierluigi Pairetto were sentenced to 3 years and 8 months and 1 year and 4 months of imprisonment, respectively. As for the referee De Santis, he was sentenced to imprisonment of 1 year and 11 months. For other defendants the court also imposed a ban on access to sports venues⁶³.

Another scandal, the so called "Calcioscommesse" or "Scommessopoli", emerged in Italy on 1 June 2011 when a number of football-related personalities were arrested by Italian police for 38 alleged cases of match-fixing. The list included well-known football players (La Gazzetta dello Sport 2011). On August 9th 2011, the Italian Football Federation announced the first-degree charges. Fourteen clubs were sentenced to fines, relegation and point deductions. Eighteen players were banned from football activities from a period going from 1 to 5 years. (La Repubblica 5.12.2011). On December, 19, 2011, a new police operation coordinated by the Magistrature of Cremona led to a number of arrests, including active and former footballers (La Repubblica 9.12.2011).

In 1976 **Malta** adopted Act XIX on 'Prevention of corruption (players)' (Amended by Act XIII in 1983 and Act XXIV in 2001), Chapter 263 of Maltese Laws. Article 3 refers to two different acts in relation to passive corruption, depending on who is being corrupted: the player and/or official or organiser. The same provision refers to active corruption. Both of these are considered to be formal crimes, so an offence can be applied even in the event that there is a mere proposal of an offer (*Il-Pulizija vs Emanuel Ancilleri (60/2009): Court of Magistrates (DC): 1st March 2010*). All these acts are punished with penalties of up to 2 years imprisonment (Art. 9). Article 4 contains an obligation for officials, players or organisers to report to the Commissioner of Police if they possess knowledge that an offence has been committed against provisions of Art. 3. Failing to comply with such an obligation is considered an offence punishable with a fine and up to 3 months imprisonment, 6 months in cases of subsequent convictions (Art. 9). The Act contains an exemption from punishment to be applied to those who are the first to give information to the relevant authorities (Art. 7). This only applies if the information is not already known by the police – *Il-Pulizija vs Claude John Mattocks (111/2009): Court of Criminal Appeal (MM) 16th November 2009*.

At least 7 decisions have been adopted recently concerning match-fixing events, all of these involve the bribery of players⁶⁴. Although in one case, suspects were acquitted due lack of evidence⁶⁵, in the other cases prison

⁶² Corte Suprema di Cassazione Sez. 3, Sentenza 25 February 2010, n. 12562 del 2010.

⁶³ Tribunale di Napoli, sezione nona penale, judgement of 8 November 2011, N 14692/11.

⁶⁴ *Il-Pulizija v. Jeffrey Camilleri (348/2010): Court of Criminal Appeal (DS) 4 th May 2011; Il-Pulizija vs Claude John Mattocks (111/2009): Court of Criminal Appeal (MM) 16th November 2009; Il-Pulizija vs Emanuel Ancilleri (60/2009): Court of Magistrates (DC): 1st March 2010; Il-Pulizija vs Clyde Grech (527/2009): Court Of Magistrates (AM): 1st June 2009; Il-Pulizija (Angelo Gafa) vs Peter Joseph Hartshorne (205/2009): Court Of Magistrates (AM): 24th March 2009; Il-Pulizija Vs Gatt Andrea (1278/2008): Court Of Magistrates (DC): 29th December 2008; Il-Pulizija Vs Lawrence Mizzi (1279/2008): Court Of Magistrates (DC): 29th December 2008. Profesor Leonard Caruna provided us with specific information concerning case law.*

⁶⁵ *Il-Pulizija v. Jeffrey Camilleri (348/2010): Court of Criminal Appeal (DS) 4 th May 2011.*

sentences were passed (from 4 to 18 months of imprisonment). It is also worth noting that there are allegations and one Maltese national involved in the German Bochum investigation (MaltaSport 2011).

The final example of a specific law dealing with the manipulation of sport results is in **Portugal**. As a reaction to several cases of match-fixing, the most famous one *Apito Dourado*, in 2007 the government adopted a law establishing a new criminal liability regime for acts against fair play in sport. Previous legislation – Law Decree 390/91– already established active and passive bribery in sport as a specific sport offence.

The 50/2007 law of 31 August on a new legal framework concerning criminal liability for corruption in the field of sports revokes Law Decree 390/91. Amongst other things, it establishes three different offences, corruption, influence peddling and criminal collusion. Regarding corruption a distinction is drawn between passive corruption – request or acceptance of improper material or non-material gain, or the promise of such gain, in return for any act or omission intended to alter or falsify the result of a sports competition (Art. 8) – and active corruption – giving or promises of improper material or non-material gains to a sports agent (Art. 9). Whilst passive corruption is punished with 5 years imprisonment, active corruption is punishable with 3 years imprisonment or a fine. The law also considers the double dimensions of influence peddling and punishes, with a penalty up to 3 years or a fine, the request or acceptance of improper material or non-material gain, or the promise of such gain, in abuse of real or supposed influence on any sports agent, in order to obtain an agreement to alter or falsify the result of a sports competition (Art. 10). Finally, this law contains a specific provision on criminal collusion with penalties up to 5 years imprisonment for a person who organises, establishes, participates in or supports a group, organisation or association whose purpose or activity is expressly to achieve the perpetration of the offences referred to in the law (Art. 11). A group, organisation or association is defined as at least three people acting in a concerted manner during a given period of time.

Penalties can be increased if the accused party is a sports director, referee, agent or club (Art. 12); but collaborating in the identification and arrest of other people involved is considered to be an attenuating circumstance, and the penalty will not be applied if the agent, in front of the facts, rejects an offer or promise or returns the advantage or an equivalent value (Art. 13). Accessory penalties may include a ban, prohibition to access public grants or funds and disqualification for a period of 5 years (Art. 4). Legal persons are also liable for the crimes referred to in the law (Art. 3).

The law imposes, on people in special positions in sport organisations and federations or in professional leagues, associations and affiliated clubs, an obligation to report. It is also worth mentioning that the law contains a Final Provision referring to the preventive actions that sport organisations undertake.

Information provided by our respondents on case law was limited to just one example. In 1997, four people, a referee, the manager of a club and two other people were considered guilty of corruption in sports with penalties ranging from 12 to 15 months of suspended imprisonment – *Acórdão do Supremo Tribunal de Justiça, 30 October 1997*. In this case it was confirmed that the offence of sport corruption, as *crime de consamação antecipada*, the crime is committed once the promise of undue advantage is given.

The ‘Apito Dourado’ is undoubtedly the most famous in Portugal and initiated the development and adoption of the new law. The case pertained to the corruption of referees in lower leagues in 2003/2004. This case has several ramifications which started different processes country-wide. Although final decisions are still pending, there have been intermediate decisions both condemning – *Tribunal Colectivo do Círculo de Gondomar, Decision 18 July 2008, Tribunal da Ralação de Guimaraes, 9 July 2009*– and absolving suspects (TSF 2009). In addition, the press has recently published news of a case of corruption in sports where two managers of a club and the club itself were condemned to a fine (Desporto 2011).

4. CONCLUSIONS: THE EFFECTIVENESS OF THE EXISTING LEGAL FRAMEWORK

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The main purpose of this section is to consider the extent to which criminal provisions in European Member States are effective in the fight against the 'manipulation of sport results'. To this end, one must consider a number of different issues including the problems encountered in the application of the most relevant provisions to match-fixing episodes and the appropriateness of relevant sanctions. We also considered practical problems linked to the prosecution of these criminal activities.

4.1 ISSUES RELATED TO THE LEGAL PROVISIONS

International and European legal framework

As far as the international and European framework is concerned, international conventions on corruption do not impose the criminalisation of acts related to the manipulation of sport results. The most relevant provisions in the United Nations and Council of Europe conventions – those on private corruption – are not mandatory, thus they do not create a direct obligation for signatory parties. In the EU, the manipulation of sports results, in principle falls under the scope of the Framework Decision on Private Corruption. However, the extent to which this applies to all kinds of betting motivated cases, in particular as far as non professional sports are concerned is not clear.

Criminalisation of match-fixing

Different arguments militate for the criminalisation of the most reprehensible forms of match-fixing. Integrity of sport can be considered a public order issue, especially when breaching sporting rules conceals significant illegal economic interests. Moreover, match-fixing, in particular concerning betting related cases, very often has implications in and beyond the sport community and often involves organised crime structures (Hill 2010). This goes far beyond the competence of disciplinary sports law, which can only be applied to those affiliated to sports organisations and which can only be imposed by sport authorities that have limited power to investigate criminal activities (section 1.4 above, also Gorse and Chadwick 2011; Vilotte 2011; Transparency International 2011).

Offences in all 27 MS... with a lot of ifs and buts

Overall, it should be underlined that the manipulation of sports results may generally be prosecuted under criminal law in 27 Member States, either through general – mainly corruption and/or fraud – or specific sport related offences (supra section 3). However, although it is not possible to define absolutely, from the responses to our surveys, serious problems in the application of the existing provisions to manipulations of competition cases, a closer examination of the relevant provisions reveals that loopholes exist. In relation to corruption provisions, subjective conditions concerning the scope of the offence are not always appropriate for match-fixing cases. In many countries, corruption offences require the bribed person to hold a manager or an employee status⁶⁶, a condition which does not exist in all match-fixing cases – in particular as far as betting related cases are concerned where match-fixing also involves non-professional sports. This is the case in Belgium, Luxembourg, Romania and Sweden. The limited scope of corruption offences was one of the reasons argued by the French legislator for amending the Criminal Code and introducing a specific provision on betting related sport corruption that also applies to non professional sports.

The appropriateness of the offence of fraud for this purpose is also debated. Whilst in some countries uncertainties concerning its application to the manipulation of sports events led to the adoption of a specific sport offence⁶⁷, in others (the paradigm being Germany) judges do not seem to face major problems in applying

⁶⁶ As it is for example the case in relation to the French or the Swedish provisions on private corruption. For more examples see supra Section 3.2.

⁶⁷ This was clearly the case in Italy and also the opinion of the doctrine in Spain, see supra Section 3.5.

fraud to match-fixing events. However, as argued by the doctrines of different countries it can be extremely difficult to prove all of the elements of a fraud offence, in particular the links between the manipulation, benefit and damage (see above Section 3 and cited bibliography). Difficulties in subsuming match-fixing under fraud provisions led the Italian and Spanish policymaker to a specific sport offence.

Specific sport offences contain certain elements that are particularly adequate for dealing with match-fixing cases, including a clearer and more comprehensive scope in relation to legally protected interests –fair play in sport competitions–; higher penalties for betting related cases⁶⁸; an obligation to report⁶⁹; measures to exonerate from criminal liability those who inform the police⁷⁰, and ‘insider information’ provisions⁷¹. However, in some case penalties seem to be too low⁷² or provisions seem not to be fully adequate to deal with certain episodes of match-fixing⁷³.

Cooperation obstacles

The lack of a coherent and comparable legal basis between Member States can make cooperation in fighting crime more difficult, in particular regarding the exchange of information between law enforcement agencies⁷⁴. This is particularly relevant as match-fixing often has a transnational dimension.

General offence vs specific offence

Focusing on the opinion of the stakeholders participating in the survey, there are important discrepancies in relation to the effectiveness of general *versus* specific offences. On the one hand, only two representatives of the Member States and some sport associations considered the lack of a specific ‘sports offence’ as an obstacle in prosecuting these crimes⁷⁵. No reasons were given. On the other hand, the vast majority of the representatives of Member States in which general provisions applied, considered that their legal framework was sufficient to deal with the problem. Out of these 19 countries, only Austria suggested that specific legislation could improve the situation and 11 Member States representatives declared that they were against the implementation of a specific provision either at the national or European level⁷⁶.

Results vary greatly when looking at the position of sports organisations. Out of the 29 EU national sports organisations which participated in the survey, only one national organisation was silent on the issue and seven were clearly against a specific provision stipulating the manipulation of sport result as a crime in their national laws⁷⁷. All the other national organisations supported the introduction of a specific offence related to the manipulation of sport results⁷⁸. At the international level, both FIFA and UEFA considered that a specific offence would help to combat match-fixing⁷⁹.

Betting organisations were generally in favour of a specific offence dealing with *all kinds* of manipulation of sport results – not only betting related cases. But they argued that to be effective such offence should be

⁶⁸ Article 13, *Legge 13 dicembre 1989, n. 401: truffa sportiva*, Italy.

⁶⁹ See for example art. 4, Italian law or art. 4, Prevention of Corruption (players) Act 1976, ACT XIX of 1976 (Malta).

⁷⁰ So they do art. 46 Act of 25 June 2010 on Sport (Poland) or art. 9, Prevention of Corruption (players) Act 1976, (Malta).

⁷¹ See art. 47 of Act of 25 June 2010 on Sport (Poland).

⁷² As it is the case in Greece, with a maximum penalty of 6 months.

⁷³ So for example in Spain, where according to the doctrine, new provisions are difficult to apply to betting related cases involving non-professional sports (see *supra* section 3.5).

⁷⁴ Interviews with Belgian and Luxembourg prosecutors –8/11/11 and 3/10/11. Same view was expressed by the German Federal Ministry of the Interior in the response to the questionnaire.

⁷⁵ So did the representatives of the Hungarian Ministry of National Resources and of the Office for the Sport Presidency of the Council of the Ministers of Italy. Also, the French Rugby Association, the Belgium Football Association, the Latvian Football Association and the Romanian Football Association considered the lack of a specific sport offence as an impediment to prosecute match-fixing cases.

This was as well the position of some non European associations that also replied to our questionnaires. According to the Switzerland football association ‘it is very uncertain whether the behaviour of players who accept money for manipulating purposes is a criminal offence in Switzerland. The debate is still open. A specific sports fraud offence in the Swiss penal code would certainly improve the situation.’ On the other hand, the football association of Northern Ireland (UK) considered that existing legislation (in that case Gambling Act) predated the current global threat of manipulation of sports results.

⁷⁶ Belgium (the Flemish Ministry for finance, budget, work, town and country planning and sports), Denmark (the Ministry of Culture), Czech Republic (the Ministry of Education, Youth and Sports), Estonia (the Ministry of Culture), Finland (the Ministry of Education and Culture), Ireland (the Department of Transport, Tourism and Sport), Lithuania (the Department of Physical Education and Sports under the Government of the Republic of Lithuania), Netherlands (the Ministry of Health, Welfare and Sport), Romania (the Ministry of Justice), Slovakia (the Ministry of Education, Science, Research and Sport), Sweden (the Ministry of Culture), and UK (UK Gambling Commission).

⁷⁷ Belgium Tennis Federation, Czech Football Association, French Football Association, German Football Association, Greek Football Association, Luxembourg Football Association and Football Association of Scotland.

⁷⁸ The complete list of national sport organisations that responded to our survey is included in Annex 5.

⁷⁹ KEA interview with Julien Zylberstein, EU Legal Affairs Advisor, UEFA – 05/10/2012, and exchange of views with FIFA in November 2011 (EWS GmbH opinion).

implemented internationally. Only the UK Gambling Commission commented against a specific offence. ESSA noted that provisions on sport fraud would need to include an offence on bribery but also on insider information, fraud or money laundering.

Interviews with experts were not conclusive on this point. For example, while a Europol official, the journalist Declan Hill and lawyer Leonard Caruana and Professor Chantal Cutajar considered that specific offences were entirely necessary⁸⁰, others experts such Drago Kos and Sylvia Schenk were not convinced⁸¹.

The need for a specific offence has also been suggested by the European Parliament, which, in its recent resolution on the European Dimension of Sport, "urges 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 "calls 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" (European Parliament 2012, par. 84). This last sentence can be linked to the wording of Art. 83.1 TFEU that includes corruption as a specific crime where harmonisation is possible.

From the analysis of the data collected in this study (legislation and case law), we can conclude that the existence of a specific sport offence does not necessarily lead to more judicial decisions or to fewer suspicious cases. Regarding the former, it seems that the willingness of the parties concerned, from the police, to the sports movement has a much greater impact. In fact there is a consensus that political willingness and strong involvement of the relevant stakeholders together with educative and preventive measures are needed to make this fight more effective. No doubt, some progress has taken place in recent years. However, the fight against match-fixing is yet to become a policy and judicial priority all over Europe.

At the same time, in theory an *ad hoc* offence targeted at sport fraud could better address the uncertainties posed by existing legislation and facilitate prosecution overall. In this sense, the opinion of prosecutors cannot be disregarded. A specific offence, they often comment, could facilitate their work and would encourage investigations. As acknowledged in a recent study (IRIS 2012,64), the absence of a specific sport offence does not make the prosecution of match-fixing activities impossible, but it could have an important dissuasive effect and facilitate the mobilisation of police and judicial resources.⁸²

Lack of uniform penalties

Finally, in relation to penalties it was noticed that they differ greatly around Europe. In countries where common offences are applied, maximum penalties for corruption vary from 2 years, in Finland, to 15 years in Romania. As regards fraud, prison penalties go from 2 years in Slovakia, 5 years in Germany, and Ireland, 10 years in the Czech Republic and Hungary to 13 years in Latvia – in the event of aggravating circumstances. In countries with specific sport offences, maximum penalties can vary from 6 months in Greece to 8 years in Bulgaria. The specific penalties for each country and each crime are detailed in Annex 2. In some cases, particularly those that have a tradition of a specific sport offence, penalties are particularly low –notably in Greece. However, it is worth noting out that in relation to the most serious cases, criminal courts will take into account aggravating circumstances or consider the relationship between offences of corruption, fraud or sport offences and money laundering or organised crime⁸³. This substantially increases final penalties.

Scarce jurisprudence

⁸⁰ KEA Interviews with Robert Hauschild, organized crime department of Europol – 2/12/2011, Declan Hill, the journalist and author of 'The Fix' – 19/01/2012, and Leonard Caruana, criminal law lecturer and lawyer in Malta – 30/01/2012.

⁸¹ KEA Interview with Drago Kos, the President of Groups of States Against Corruption – 24/11/2011.

⁸² And it continues « Dans ces logiques nationales, il s'agit d'aboutir à une sorte de « police du sport », non pas dans un objectif de surveillance du mouvement sportif, mais plutôt en vue de faciliter l'activation d'outils policiers et judiciaires. Outre ses vertus dissuasives, ce délit de fraude sportive « faciliterait la mise en œuvre de moyens d'investigation spécifique. Aujourd'hui le risque est sous-estimé. Les procureurs de différents pays s'accordent à dire que le problème est majeur mais sous-traité. Systématiser la pénalisation de la manipulation de rencontres contribuerait alors à participer à une prise de conscience élargie ». IRIS, Étude 'Paris sportifs et Corruption », 2012, p. 64.

⁸³ As it may be concluded from the analysis on the most recent cases, see *supra* section 3.

Examples of criminal jurisprudence in relation to the manipulation of sport results are rare. We identified relevant decisions in only nine countries: the Czech Republic, France, Finland, Germany, Italy, Poland, Portugal, Malta and the UK. Nevertheless, there are ongoing investigations in Austria, Belgium, the Czech Republic, Germany, Greece, Hungary, Italy, Malta, Poland, Portugal, Romania, Slovenia and the UK (See Annex 3 and Annex 4, for info on ongoing investigations and disciplinary decisions).

The limited number of criminal court decisions revealed by our surveys, interviews and desk-based research may be the result of several factors. On the one hand, in the majority of cases publicly available resources and even legal databases only contain decisions taken at certain levels, usually at high courts, and not by lower instances. Thus these resources seem to be illustrative rather than exhaustive. On the other hand, some factors lead us to conclude that the number of judicial decisions is actually extremely low. This might be explained by a lack of reporting, closed or dismissed investigations, and a lack of political willingness to undertake investigations.

<u>Country</u>	<u>Decision</u>	<u>Penalties</u>
CR	Decision TDO 510/2007, Supreme Court of the Czech Republic	Penalties imposed varied from imprisonment from 8 to 14 months and fines
Finland	The Pesäpalo (2001)	Seventeen people sentenced to conditional imprisonment from 3 to 5 months, three people received fines
	The Nissinen case (2008)	Coach sentenced to 1 year and 1 month of imprisonment and fine
	The Mithuk case (2009)	Player sentenced to conditional imprisonment of 4 months
	The Wilson Raj Perumal case (2011).	Perulman sentenced to 2 years of prison, Nine players to conditional imprisonment from 5 months to 20 months
Germany	Decision of 17 November 2005, the Berlin D. C. (Hoyzer)	Referee sentenced to 2 years and 5 months imprisonment
	Decision 12 Kls 35 Js 141/10 - 16/11 by the Bochum District Court to three defendants	Defendant D sentenced to 5 years and 6 months imprisonment Defendant T sentenced to 5 years and 6 months imprisonment Defendant N3 sentenced to 1 year and 6 months imprisonment
	Decision No. 12562 of 2010 by the Supreme Court of Appeal	Sentences (4 months imprisonment and 400 EUR) were cancelled
	Decision No. N 14692/11 by the Court of Naples	Manager of Juventus sentenced to 5 years and 4 months imprisonment. Presidents of Fiorentina sentenced to 15 months imprisonment. President of Regina sentenced to 18 months imprisonment. Three referees sentenced to 3 years and 8 months imprisonment; and 1 year and 1 month imprisonment; and 1 year and 11 months imprisonment
Italy	Case of Polar Wrocław (2006)	Four football players sentenced respectively to 12, 15, 18 and 20 months imprisonment
	Case of Arka Gdynia (2007)	President of a club sentenced to 4 years imprisonment, official to 3.5 years, two members of the Board respectively sentenced to 2 and 2.5 years imprisonment
	Case of Korona Kielce (2008)	The coach sentenced to 3 years imprisonment and fined 100.000 PLN Assistant sentenced to 2.5 years imprisonment and fined 30.000 PLN
	Case of Górnik Polkowice (2010)	27 persons sentenced
Poland	Case of KSZO Ostrowiec Świętokrzyski / Ceramika Opoczno / Stasiak Opoczno (2010)	Sentences imposed varied from 8 months to 3 years imprisonment and fines
	Case of Motor Lublin (2011)	Coach sentenced to 3.5 years imprisonment and fined 20.300 PLN
	Case of Zagłębie Lubin and Cracovia Kraków (2011)	Sentences imposed varied from 1 year to 2 years imprisonment
	Il-Pulizija vs Claude John Mattocks (111/2009)	Player sentenced to 4 months imprisonment and fined €500
Malta	Il-Pulizija vs Emanuel Ancilleri (60/2009)	Accused sentenced to 18 months imprisonment and fined €2,000
	Il-Pulizija vs Clyde Grech (527/2009), the Court Of Magistrates (AM)	Player sentenced to 4 months imprisonment and fined €500
	Il-Pulizija (Angelo Gafa') vs Peter Joseph Hartshorne (205/2009)	Player sentenced to 4 months imprisonment and fined €500
	Il-Pulizija Vs Gatt Andrea (1278/2008)	Player sentenced to 1 year imprisonment and fined €500
	Il-Pulizija Vs Lawrence Mizzi (1279/2008)	Player sentenced to 1 year imprisonment and fined €500
UK	Decision T20117139 by the Southwark Crown Court on 3/11/ 2011	Players sentenced to 6 months, 1 year and 2 years and 8 months imprisonment

4.2 OPERATIONAL PROBLEMS

The major obstacles in prosecuting cases of match-fixing activities are operational rather than legal. The vast majority of stakeholders agreed that the main difficulty resides in providing evidence to the prosecution– eg, beyond common difficulties concerning the links among the related acts and the transfer of money, the fact that a player has deliberately underperformed or that he/she had contacts with the members of a criminal gang seem to be extremely difficult to prove. Furthermore, even when an early warning system shows high probability that a match was fixed, it is not sure (for obvious reasons) that this is accepted as material evidence for a prosecution. Lack of sufficient evidence usually leads to the abandonment of investigations or to dismissal of cases. Furthermore, the prosecution of match-fixing is extremely resource intensive, taking both huge amounts of time and money in relation to offences that in some countries result in extremely low sanctions⁸⁴. The prosecutor is likely not to go ahead with a case if there are numerous uncertainties regarding the viability of proceedings; if the offence is characterised as a misdemeanour, or if match-fixing is not considered as a priority by the corresponding authorities⁸⁵.

Other obstacles relate to low levels of awareness of the problem, a lack of dialogue and coordination amongst the different stakeholders, public authorities, gambling operators and sports organisations, and a lack of reporting of suspicious cases⁸⁶. It was also felt that, to a lesser extent, the lack of expertise necessary to investigate such crimes and insufficient human and financial resources prevents decisive action. To address this, some Member States such as Austria and Italy have created special units in charge of investigating sport corruption cases.⁸⁷

The transnational dimension of match-fixing, particularly concerning illegal online gambling, justifies an international approach to combat these crimes more effectively. Thus, the lack of transparency and cooperation between countries is one reason for the difficulty in prosecuting these criminal activities.⁸⁸

Although the sport community has taken decisive steps in the fight against match-fixing (see section 1 above), there is still a lot to be done especially at the local level. Better collaboration between sports federations, betting operators and public authorities would provide a breakthrough in the fight against match-fixing. Awareness and the education of athletes, referees, officials, especially the younger players, is also key in the successful fight against match-fixing and corruption in sport.

⁸⁴ Interview with Robert Hauschild, head of the Organised Crime Department, Europol, 2nd December 2012.

⁸⁵ This was a common concern shown by the participants in the surveys and interviews during the research process. Numerous examples of dismissed or closed investigations were collected through desk research or the extensive survey. Some examples below:

- In 2010 in the United Kingdom, the Gambling Commission issued a joint investigation with the support of the Greyhound Board of Great Britain where an individual was cautioned by the Commission under section 42 of the Gambling Act 2005, following an operation flagged under the suspicious betting report. The criminal investigation found no evidence on the link between persons operating the racing track and the individual placing bets (Gambling Commission 2010).
- Another case investigated in the United Kingdom by the police of Strathclyde and support of the Gambling Commission involved snooker players Stephen Maguire and Jamie Burnett. After all it was found to have insufficient evidence to pursue a criminal prosecution by the Scottish Crown Council (Telegraph 18.05.2011).
- In 2008 in Romania, 18 managers of football teams of the Romanian Football Federation were suspects under investigation by the National Anticorruption Authority. The case was closed before being brought to the court (Information provided by the Romanian Tennis Federation).
- In the Bavarian State in Germany, prosecutors decided not to open an investigation despite allegations that the 2007 UEFA Cup semi-final between Zenit St Petersburg and Bayer Munich was fixed according to a Spanish judge because not enough evidence was found (Soccernet 2008).

⁸⁶ Lack of reporting seems to be a common problem in relation to all cases of match-fixing, although it is exacerbated in cases involving the criminal mafia, which put the victims under the pressure of a conspiracy of silence.

⁸⁷ Transparency International has also argued that prosecuting obstacles may be connected with arguments that sport is a purely private leisure activity and therefore cannot be prosecuted through penal legislation, the respect of fair-play being the responsibility of sport association and not a public interest (Bures 2008, 16). However, this would be applicable only for those countries which a very specific configuration of the corruption offence, such as the Czech Republic.

⁸⁸ The need for cooperation was mentioned in the questionnaires completed by the Dutch Rugby Union, Flemish Department of Culture, Youth, Sports and Media, Estonian Ministry of Culture, the Finnish Ministry of Education and Culture, Latvian Ministry of Education and Science, Slovak Ministry of Education, Science, Research and Sport, Slovenian Ministry of Education and Sport etc.

5. POLICY RECOMMENDATIONS

This set of recommendations aims to address legal uncertainties as well as the operational barriers mentioned above. We focus on ten specific recommendations addressed to the EU and aimed at improving the effectiveness of the existing legal framework. While the first three recommendations mainly concern the substantive legal framework, recommendation, points four and five focus more on the operational dimension of the problem, in particular as far as the cross-border cooperation of law enforcement agencies is concerned. Recommendations six and seven refer to the implementation of better channels to share information and experiences as well as to facilitate the coordination of the existing initiatives. The last three recommendations concern awareness raising and further information on the problem of match-fixing.

1. EU's active involvement in the Council of Europe's initiatives

Last September the Council of Europe adopted a Recommendation on match-fixing –the Recommendation on promotion of the integrity of sport against manipulation of results, notably match-fixing⁷. The recommendation calls on national authorities to ensure that their legal and administrative systems are appropriate and effective to combat the manipulation of sports results. In this framework, the Council of Europe has commissioned a feasibility study on the adoption of a Convention on match-fixing. The conclusions of this study have not yet been published, but according to informal information, it seems that the Council of Europe will propose an international Convention or a non-binding legal instrument that will essentially include the main points of the recommendation. Although it will not be a criminal law legal instrument, it is likely to contain some provisions referring to criminal law by requiring signatories to develop sufficient sanctions around the manipulation of sport results. It will be open for ratification by countries which do not belong to the Council of Europe and very likely to the European Union. Taking into account the international dimension of match-fixing as well as the Council of Europe's scope, the EU should be actively involved in the negotiation of this international legal instrument, be part of it and invite the Member States to adhere to it.

2. Adopt a definition of the manipulation of sport results, ensure that Member States have an effective legal framework to cope with match-fixing and clarify the scope of the Framework Decision on private corruption

Even if all the Member States have a legal framework enabling the prosecution of certain match-fixing events, no ideal reference model exists. As explained in previous sections, there are loopholes in relation to the application of national provisions to match-fixing cases (see *supra* sections 3.2–3.7). The EU should take all the necessary steps to ensure that legislation throughout the 27 Member States criminalises the most reprehensible forms of match-fixing, and addresses the loopholes identified in section 3. To this end, the EU Council could issue a Recommendation and adopt a definition of the manipulation of sport results that clearly identifies what acts deserve to be punished by criminal law, particularly taking into account in particular those forms of match-fixing that have a significant economic impact (e.g. betting related match-fixing or sporting match-fixing in professional sports) and are connected to or involve betting, abuse of insider information, corruption practices, trafficking of influence or extortion.

The Recommendation should call on the Member States to ensure the effectiveness of their legal system in coping with match-fixing so that the most relevant forms of match-fixing can be prosecuted under criminal provisions (either through general or specific offences) including effective sanctions. Member States should also consider imposing reporting obligations on betting authorities and sport organisations.

In parallel, a Communication or Guidelines clarifying the scope of the provisions in the Framework Decision 2003/568/JHA on private corruption and their applicability to match-fixing events may be published. This would shed some light on the applicability of the Framework Decision *vis à vis* its implementation and interpretation in Member States. However, although this kind of document is very common in other areas of law, its use in relation

to criminal legislation might be questioned. The EU should assess the extent to which this approach would be valid in European criminal law in light of the principle of legality and hence, of the strict interpretation of the law.

A follow up evaluation on the implementation of the Recommendation should be established. Should Member States be unable to ensure that their national frameworks *satisfactorily* address the points contained in the Recommendation, the EU should go further by adopting the legislative measures suggested below.

a) Expand the scope of Framework Decision on private corruption

The Commission should clarify the scope of the Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector with regard to sport fraud. The EU should consider reviewing the text and mentioning the manipulation of sports results as a specific form of corruption. As suggested by Chantal Cutajar in order to ensure that match-fixing is fully covered by a legal text, the EU should expand the scope of the framework decision to betting activities.

b) Impose surveillance obligations for betting operators

With the purpose of reinforcing surveillance in betting activities, the EU could modify the Directive 2005/60 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing in order to cover sport betting organisations. Article 2 of the Directive on money laundering does not apply to organizers of sport betting activities. Therefore, if the objective is to identify bettors, it would be necessary to extend the scope of the directive.

c) A new European sports crime

The EU might consider adopting a Directive, under Art. 83 (1) TFEU, introducing a new European crime for the manipulation of sport competitions linked to the definition of corruption if the conditions for criminal law legislation are met. In line with the Treaty, the directive could establish minimum rules concerning the definition of the offence and sanctions.

The creation of a specific European crime has a number of advantages. The creation of a new European crime would help to define the parameters of the offence and give more solid grounds to prosecutors to undertake investigations. Once implemented at the national level, the relevant provisions would contribute to the creation of greater legal security for prosecutors; reduce obstacles to investigations and prosecutions encountered in cross-border cases, and ensure that sanctions are effective and enforceable in all EU Member States. Moreover, an approximation of legislation concerning the definition and sanction of such crimes would avoid the existence of safe heavens for criminal organisations that may choose the most lenient country as a basis for operation.⁸⁹ However, in the light of the main findings of this study and taking into account the principles of necessity and subsidiarity of European criminal law, the above mentioned options should be further explored. A draft directive would require an impact assessment that goes far beyond the scope of this study.⁹⁰

⁸⁹ These reasons coincide with the ones expressed by the Commission in its Communication on Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law, (European Commission 2011g, 5).

⁹⁰ According to Chantal Cutajar, criminal law Professor, Head of the G.R.A.S.C.O. (Groupe de recherches actions sur la criminalité organisée) and expert reviewer for this study, this new European crime should contain the following elements:

1. The fact for a person of promising, offering or giving, directly or indirectly, individually or through a third party, to a participant to a competition or sport event taking place in a Member State of the European Union or a third country, when one of the participants is a citizen of a Member State of the European Union, any type of undue advantage, for said person or for a third party in order for the participant to modify the normal course of said competition or event by doing or abstaining himself or herself from doing something in violation of the rules and sport regulations regulating said competition or event.

2. Participants in a sport competition or event could mean the organizers, coaches, sportsmen or sportswomen in whatever legal relationship they could have entered with the organizers, licensed sports agents, referees, managers of national or international sport federations, entities or associations and, generally speaking, anyone who is in position to influence the fair course of a competition or sport event.

3. The fact for a participant, in the course of a competition or sport event taking place in the EU to illegally seek or agree to accept any promise, gift, award or any kind of advantages, for himself or herself or for a third party, in order for said stakeholder to modify the fair course of said competition or sports event by doing or abstaining from doing something in violation of the rules and regulations regulating said competition or sports event.

4. The fact of committing the acts referred to in 1. and 2. when said acts are committed in connection with sport betting activities.

5. Provide for criminal liability of legal entities

6. The fact for anyone to engage in sport betting activities while being fully aware that the competition or sport event has been fixed as specified under 1 or 2. The offence is constituted even if the acts or activities which led to the manipulation of sport results were carried out on the territory of another

3. Encourage disciplinary rules and proceedings as well as a closer collaboration of sport organisations with law enforcement agencies and betting operators

Criminal legislation must only intervene in relation to cases that can be considered as public order issues. The manipulation of sports results has a double dimension and must be considered not only by criminal legislation but also by disciplinary provisions. Disciplinary justice is quicker and requires a lower level of evidence than criminal justice. In this sense is worth recalling that many Member States already contain provisions in their sports laws covering the manipulation of sport competitions as an infraction which may be sanctioned by relevant authorities⁹¹ and that many sport organisations have similar provisions in their internal rules. However, this is not always the case⁹². Without prejudice to actions to be taken in relation to criminal law, the Commission should call on the sports movement to introduce specific provisions on match-fixing in their internal rules in case they do not exist or have limited scope, to adopt disciplinary decisions when these rules are infringed and to adopt, according to their means, the necessary measures, in cooperation with betting authorities, to monitor sport events. Sanctions should be coordinated in order to ensure that a player or an official banned in one country is not able to take part in a sporting competition somewhere else. Sport organisations should also enter into close collaboration with law enforcement agencies to facilitate the prosecution of sport crimes and put whistle blowing systems as well as education programmes in place. In order to improve the efficiency of the disciplinary system as well as to enhance the cooperation with the police, the adoption of agreements with betting operators on sharing of information should be promoted.

4. Encourage cooperation of the enforcement European agencies EUROPOL and EUROJUST

Within its current competences and missions, Europol should be encouraged to play a major role in the fight against the manipulation of sports competitions. In this sense, Europol and the Member States should be encouraged to create joint international investigation teams (JIT) in the event of suspicious betting patterns or breaches of sports integrity rules (in a similar sense EP 2011a, point 4). The use of JIT has many advantages for investigating match-fixing cases. It would facilitate information sharing as well as the request of investigation measures directly between JIT members without the need for formal requests; allow JIT members to be present at house searches, interviews, etc. in all jurisdictions covered; allow for the informal exchange of specialised knowledge; provide the best platform to determine optimal investigation and prosecution strategies; and amongst other things permit applications for available EU, Eurojust or Europol funding (European Council, 2011a). Unfortunately JIT are not widely used by Member States. However, in the field of match-fixing, there is at least one successful example of a JIT involving Finland, Germany and Hungary in relation to cases of match-fixing which occurred in Hungary (Boros 2011).

It must also be remembered that Europol contributes to the regular exchange of information on international crimes with national authorities and that this collaboration could be crucial to match-fixing cases. Better coordination amongst national contact points and the training of members of the competent national authorities

member State or of a third country. The offence is constituted even if facts under 1 and 2 cannot be prosecuted. That the Courts of the Member State have or do not have jurisdiction over the offence under 1 or 2 is irrelevant. The offence may be prosecuted when its perpetrator knew that the competition or sport event was manipulated or when he/she ought to have been aware of said manipulation.

7. Knowledge, intention or motivation required to qualify as an offence the acts mentioned under 1, 2 and 5 can be invoked on the basis of objective and factual circumstances.

However this proposal considers any kind of match-fixing (even that taking place at the lowest levels with no betting purposes and no significant economic impact) as a criminal act. Whether criminal legislation is the most appropriate to deal all manipulation of sport results cases is still a subject of debate.

⁹¹ For example, manipulation of sports results is considered a major infringement in Spanish Sport legislation, article 76 Act 10/1990. The acts lists different penalties that may be sentenced by the sporting bodies with disciplinary competence, disqualification, modification of the competition's result and economic sanctions being the most relevant ones. This disciplinary regime is developed by the Royal Decree 1591/1992 on Sports Discipline. The Royal Decree specifies the sporting bodies that may conduct investigations and impose sanctions. Decisions issued by sport federations, professional leagues and similar entities may be appealed before the *Comité Español de Disciplina Deportiva*, public body that puts an end to the administrative proceedings. Decisions issued by the *Comité Español de Disciplina Deportiva* may be appealed before public courts.

⁹² Among the National Rugby Unions that submitted answers to the questionnaire only the French one has provisions on manipulation of sports results in their internal rules (the new French legislation related to betting requires sports organisations to incorporate regulations to prevent certain actors on placing bets in competitions which they participate). When it comes to football, out of 21 answers only three football associations (Latvia, Northern Ireland and Slovenia) do not have specific provisions on manipulation of sports results in their internal rules.

might also have a positive effect on the fight against match-fixing. The extent to which Europol itself could collaborate to raising awareness about the problem must be still assessed, in similarity with the actions that have recently been assumed by Interpol (FIFA 2011, IRIS 2012). Finally, match-fixing should be considered in Europol threat assessment reports.

Either at Europol or at the national level, special police units designated to deal with sport corruption cases should be created (see for example the *Italian Unità investigativa per le scommesse sportive* or Austria Task Force – Ministero Dell’Interno 2011, Austria Presse Agentur 2012).

At the international level, the EU should also encourage the cooperation of Europol and national authorities with Interpol and law enforcement agencies in third countries.

Beyond police facilities, the EU and Member states should make better use of existing judicial mechanisms to improve the fight against match-fixing with cross-border dimensions. As in the case of Europol, Eurojust could play a stronger role here. Eurojust could also form part of the JITs and would no doubt facilitate the investigation and prosecuting of the manipulation of sport competition cases. In fact, Eurojust assistance has been required in at least two recent cases, in Bochum and Hungary, concerning match-fixing (Crookes 2011). In the case of Hungary it is worth noting that not only was a JIT created but that Eurojust facilitated the execution of the letters of request in relation to other countries involved. The relevant authorities at the European and national level should be aware of the benefits of the cooperation mechanisms provided in the Treaty in order to better address these transnational crimes (European Commission 2011 d, section 4.1.1). The possibility for Eurojust to appoint a consultant on the manipulation of sports competitions crimes could also be assessed⁹³.

5. Reinforce international cooperation by promoting international agreements on mutual legal assistance in criminal matters and including a reference to integrity of sports in international agreements

With a view to establishing more effective cooperation with third countries, in particular with Asian countries in which the sport betting market is particularly active, the EU should promote the widest ratification and use of relevant multilateral agreements in the field of judicial cooperation in criminal matters and, as appropriate, take the initiative to launch bilateral international agreements in this field. One recent precedent is the agreement signed in 2010 with Japan on mutual legal assistance in criminal matters (Council Decision 2010/88/CFSP/JHA of 30 November 2009 on the signing, on behalf of the European Union, of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters) which facilitates the direct request, provision and execution of mutual legal assistance in relation to investigations, prosecutions and other proceedings in criminal matters.

In addition, the EU should consider the possibility of referring to the protection of sports integrity, notably to the need for a legal framework appropriate to these criminal activities, as well as to the *surveillance* of the betting markets in international agreements with third countries⁹⁴.

6. Set-up of a platform for exchange of information and best practices

Detection and prevention are key elements for a successful policy on match-fixing. On the basis of Art. 84 TFEU, the EU should take a proactive role in the field of crime prevention, in particular by facilitating the exchange of information and best practices amongst different Member States and with the involvement of relevant stakeholders. To this end, a European platform or a thematic network to enhance cooperation and the exchange of information and best practices between stakeholders should be established. As mentioned above, lack of cooperation has been one of the main obstacles identified when dealing with match-fixing. Furthermore, the

⁹³ It must be noted that in 2005 Eurojust appointed a specialised consultant for football related crimes (hooliganism) with a view to the 2006 Football World Championships in Germany as well as to comparable events in the future (Kapplinghaus 2006, Eurojust 2007, 70).

⁹⁴ In a similar sense European Parliament 2012, KEA Interview with Santiago Fisas Aixela (MEP, author of the EP report 'European Dimension of Sport' 7/2/2012 and Responses to the Questionnaire from the Danish Ministry of Culture.

sharing of information and best practices could greatly contribute to the implementation of effective measures all over Europe. This platform would enable an assessment of existing regulatory and non-regulatory initiatives in Europe which deal with different topics, such as information agreements amongst stakeholders and reporting mechanisms (see supra section 1).

Finance for such a platform could come from the 'Erasmus for all' programme which is currently being planned (European Commission 2011i)⁹⁵. Other sources such as the Programme for the Prevention and Fight Against Crime (ISEC) or the Daphne III Programme could be used. These and other resources (e.g. the 7th Framework Research Programme) could also be considered for funding further research in order to increase understanding of the profiles of those involved in match-fixing and to better target preventive actions.

In addition, the EU should attract the attention of existing Crime Prevention fora, such as the European Crime Prevention Network (<http://www.eucpn.org>), to the topic of match-fixing.

7. Facilitate the coordination and cooperation between sport organisations, betting operators and law enforcements agencies.

The EU should operate as a facilitator to foster a better coordination of the actions that main stakeholders – notably sport organisations and betting operators – are putting in place, at least at the European level –see supra section 1.3. It should also call on the competent national authorities to establish a national focal point to which individuals and organisations may report sport crimes.

8. Raise awareness

Although in recent years match-fixing has certainly been a focus in the sports and betting agenda, there is still a lack of awareness of the issue, in particular at the local level. The EU has a responsibility to increase awareness of all the stakeholders, from the sport movement to local enforcement agencies and policy makers. To this end, the Commission should ensure that match-fixing becomes a regular topic of European meetings and fora, such as the EU Sport Forum. Follow up procedures for the recommendations to be provided by the EU Expert Group Good Governance (European Commission 2011j) in Sport should also be established.

9. Explore the link between betting related provisions and the integrity of sport

Regulatory intervention is not limited to criminal law. Under the principle of minimum intervention, betting legislation could serve as an appropriate tool in a preventive policy on match-fixing. In line with work initiated by DG MARKT⁹⁶, the European Commission should explore the extent to which existing provisions on betting, notably those relating to banning certain persons from participation in certain betting⁹⁷, determining the kind of events on which betting is allowed⁹⁸, granting sport rights⁹⁹, regulating conflicts of interest¹⁰⁰, imposing

⁹⁵ One of the objectives mentioned under the chapter "Sport" is to tackle transnational threats to sport such as doping, match-fixing, violence, racism and intolerance. The proposal establishes that transnational collaborative projects and dialogue with relevant European stakeholders shall be supported.

⁹⁶ With the adoption of the Green Paper on on-line gambling in the Internal Market (COM (2011) 128 final), the Directorate General of Internal Market launched a public consultation to assess societal and public order challenges that arise from on-line offer of gambling services in the EU as well as regulatory and technical challenges. The Directorate General also organised a series of workshops, one particularly focused on the issue of match-fixing (European Commission 2011g). The Directorate General conclusions concerning the public consultation have not been published yet, but individual contributions may be accessed on http://ec.europa.eu/internal_market/services/gambling-workshops_en.htm.

⁹⁷ For example article 6 on the new Spanish Law on Gambling forbids sport players, trainers and other participants directly involved in a sports event, as well as directors of sporting entities and referees to bet on the event. In the opinion of the independent expert Sylvia Schenk no betting on one's own sport should be allowed.

⁹⁸ See in France, art. 13 *Loi n° 2010-476 du 12 mai 2010 relative à l'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne* and *Décret n° 2010-483 du 12 mai 2010 relatif aux compétitions sportives et aux types de résultats sportifs définis par l'Autorité de régulation des jeux en ligne*, or in Denmark, the Bill for a Regulation of Gaming Act.

⁹⁹ In the same vein of art. 331-1 French Code Sport or Australia (Victoria state) legislation.

¹⁰⁰ Again according to the relevant provisions in the French and Italian legislation, *vid.* the respective responses to the EC Consultation on Online Gambling.

information obligations on suspicious matches¹⁰¹, or even requiring the adoption of integrity policies by sport organisations¹⁰², could have a measurable preventive or even detection impact.

10. Further data

More data on the causes, scale of the problem as well as results of preventive measures and other initiatives to fight against match-fixing is required. Thus, in its recent Conclusions, the European Council invites the Commission to consider launching a study mapping the situation with regard to match-fixing in the EU and beyond, identifying the existing problems as well as initiatives aimed at fighting match-fixing and proposing recommendations on possible solutions which could be adopted at the EU and international level. A similar invitation is addressed to EU Member States and stakeholders. Further research using objective data is no doubt needed to clarify the reasons behind match-fixing and the exact scale of the problem, as well as to assess the necessity and proportionality of the measures to be undertaken. In addition to this and in order to gain a clear overview of how sports corruption is approached in different Member States, the issue of sport corruption should be included as a specific topic in the new Anti-Corruption Reports¹⁰³. In parallel, the Commission could launch a Green paper on corruption in sport and match-fixing by the European Commission to stimulate debate on the issue.

¹⁰¹ As it is the case in the UK in relation to the information to be provided to the Gambling Commission, or in France in relation to the content of the binding agreements to be signed between the betting operators and the sport organisations (Article L333-1-2 French Code Sport).

¹⁰² See 6th Additional Provision (*Disposición Adicional Sexta*) Spanish Gambling Act.

¹⁰³ An EU Anti-Corruption Report will be published every two years, which will give an assessment of Member States' efforts to fight corruption (Commission decision of 6.06/2011 C(2011) 3673 final). See *supra* section 2.3.

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Other countries

Australia

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ANNEX 1 –COUNTRY PROFILES

AUSTRIA

1. Relevant Provisions¹⁰⁴

Austrian Criminal Code (Strafgesetzbuch – StGB) Gazette No. 60/1974 as amended by Federal Law Gazette I No. 130/2011

§ 146 Fraud

Anyone who, with the intent of unlawfully enrich himself or a third person through the behaviour of the deluded, misleads by misrepresentation of facts to an action of toleration or omission which causes property damage to this person or another person shall be punished with imprisonment of up to six months or a fine of up to 360 daily rates.

§ 147 Serious fraud

(1) Whoever commits fraud, by using a false or falsified document, a false, distorted or alienated non-cash means of payment, improper or corrupted data, or other such evidence, a false measuring instrument, (...)or pretends to be an official shall be punished with imprisonment for up to three years.

(1a) same punishment shall apply to a person who commits fraud with more than minimal harm through the use of a prohibited substance or prohibited by the Anti-Doping Convention, Federal Law Gazette No. 451/1991, for purposes of doping in sport.

(2) same punishment shall apply to whoever commits a fraud with more than € 3000 damage.

(3) Who causes damage of more than 50 000 euro shall be punished with imprisonment of one to ten years.

2. Penalties

Art. 146 – imprisonment up to six months or a fine of up to 360 daily rates

Art. 147 (1) – imprisonment up to three years

Art. 147 (2) – €3000 damage

Art. 147 (3) – If damage is up to €50 000 – imprisonment from one up to ten years

3. Jurisprudence

Not provided by the respondent

¹⁰⁴ Unofficial translation KEA European Affairs.

1. Relevant Provisions

8 JUIN 1867 – CODE PENAL.

(NOTE 1 : Voir la loi du 10 juillet 1996 portant abolition de la peine de mort et modifiant les peines criminelles, notamment l'article 3, 1996-07-10/42)

(NOTE : Consultation des versions antérieures à partir du 05-04-1990 et mise à jour au 13-07-2011)

Article 504bis

§ 1er. Est constitutif de corruption privée passive le fait pour une personne qui a la qualité d'administrateur ou de gérant d'une personne morale, de mandataire ou de préposé d'une personne morale ou physique, de solliciter ou d'accepter, directement ou par interposition de personnes, une offre, une promesse ou un avantage de toute nature, pour elle-même ou pour un tiers, pour faire ou s'abstenir de faire un acte de sa fonction ou facilité par sa fonction, à l'insu et sans l'autorisation, selon le cas, du Conseil d'administration ou de l'Assemblée générale, du mandant ou de l'employeur.

§ 2. Est constitutif de corruption privée active la fait de proposer, directement ou par interposition de personnes, à une personne qui a la qualité d'administrateur ou de gérant d'une personne morale, de mandataire ou de préposé d'une personne morale ou physique, une offre, une promesse ou un avantage de toute nature, pour elle-même ou pour un tiers, pour faire ou s'abstenir de faire un acte de sa fonction ou facilité par sa fonction, à l'insu et sans l'autorisation, selon le cas, du Conseil d'administration ou de l'Assemblée générale, du mandant ou de l'employeur.

Article 504ter

§ 1er. En cas de corruption privée, la peine sera un emprisonnement de six mois à deux ans et une amende de 100 {euros} à 10 000 {euros} ou une de ces peines.

§ 2. Dans le cas où la sollicitation visée à l'article 504bis, § 1er, est suivie d'une proposition visée à l'article 504bis, § 2, de même, que dans le cas où la proposition visée à l'article 504bis, § 2, est acceptée, la peine sera un emprisonnement de six mois à trois ans et une amende de 100 {euros} à 50 000 {euros} ou une de ces peines.

2. Penalties

Art. 504ter § 1er – imprisonment for six months to two years or fine of €100 to €10, 000

Art. 504ter § 2 – imprisonment for six months to three years or fine of €100 to €50, 000

3. Jurisprudence

No jurisprudence.

1. Relevant Provisions¹⁰⁵

Criminal code (SG no 60 of 2011)

Chapter 8: Crimes Against Sport

Art. 307b.

(New – SG 60 /11) Whoever, by using violence, deception, intimidation or other unlawful means, persuades another person to influence the development or outcome of a sporting event, administered by a sports organization, shall be punishable by imprisonment from one to six years and a fine amounting from one thousand to ten thousand levs, if the act does not constitute more serious crime.

Art. 307c.

(New – SG 60 /11) (1) Whoever promises, offers or gives another person a benefit which is not due in order to influence or because the person has influenced the development or outcome of a sporting event, administered by a sports organization, shall be punishable by imprisonment from one to six years and a fine amounting from five thousand to fifteen thousand levs.

(2) The punishment under para 1 shall also be imposed on a person who asks for or accepts any benefit which is not due or accepts an offer or promise for a benefit in order to influence or because the person has influenced the development or outcome of a sporting event, as well as to a person with whose consent the benefit has been offered, promised or given to a third party.

Art. 307c.

(New – SG 60/11)(3) Whoever mediates so as to be committed any of the acts under para 1 and 2, if the act does not constitute more serious crime, shall be punishable by imprisonment of up to three years and a fine of up to five thousand levs.

(4) The punishment under para 1 shall also be imposed on a person who provides or organizes the provision of the benefit.

(5) The perpetrator shall be punished under the terms of Art. 55, if the latter notifies a proper authority of a crime under paras 1 through 4.

Art. 307d. (New – SG 60 /11) (1) The punishment shall be imprisonment from two to eight years and a fine amounting from ten thousand to twenty thousand levs in those cases where the act under Art. 307b and 307c has been committed:

1. in regard to a participant in a sports competition under 18 years of age;
2. in regard to two or more participants in a sports competition;
3. in regard to or by a person who is a member of a managing or control body of a sports organization, a referee, delegate or another person during or on occasion of performance of their official duties or functions;
4. repeatedly.

¹⁰⁵ Translation provided by the Bulgarian Ministry of Physical Education and Sport.

(2) The punishment shall be imprisonment from three to ten years and a fine amounting from fifteen thousand to thirty thousand levs, in those cases where the act under Art. 307b or Art. 307c:

1. has been committed by a person acting on behalf of or pursuant to a decision of an organized criminal group;
2. has been committed under the terms of dangerous recidivism;
3. is a particularly serious case;
4. refers to a sports competition included in a gambling game with betting on the development or outcome of sporting events.

Art. 307e.

(New – SG 60/11) (1) In the cases referred to in Art. 307b, 307c and 307d the court may also rule deprivation of rights pursuant to Art. 37, para 1, items 6 and 7.

(2) In the cases referred to in Art. 307d the court may also rule seizure of up to one half of the culprit's property.

Art. 307f.

(New – SG 60 /11) The subject of the crime envisaged in the present chapter shall be seized in favour of the state, and in those cases where it is missing or expropriated, its equivalence shall be awarded.

2. Penalties

Art. 307b. – Prison sentence from one to six years; fine from one thousand to ten thousand levs (€ 511.30 – 5,113.106)

Art. 307c. – Prison sentence from one to six years; fine from five thousand to fifteen thousand levs (€ 2,556.50 – 7,699.50)

Art. 307c (3) – Prison sentence of up to three years; fine of up to five thousand levs (€ 2,556.50)

Art. 307d.(1) – imprisonment from two to eight years and a fine from ten thousand to twenty thousand levs (€5,113 – 10,225.99)

Art. 307d. (2) – imprisonment from three to ten years and a fine from fifteen thousand to thirty thousand levs (€7,669.50–15,338.99)

3. Jurisprudence

No jurisprudence.

¹⁰⁶ Conversion made in 25/01/2012 with European Central Bank Statistical Data Warehouse.

1. Relevant Provisions¹⁰⁷

Manipulation of sports results (in the context of bribe, fraud)

The Cyprus Sport Organisation Law (Law 41/69) As amended.

Article 24

(1) Anyone who:

(a) Shall claim or accept any not suitable gifts, allowances or benefits, of any nature or promise to acquire them, for the purposes or for or against the change of the results of a match or of an individual competition with respect to a club, carried out or which is carried out among clubs

(b) Shall offer, give or promise a gift, allowance or a benefit of any nature:

(aa) to an athlete, friend or relative of his for the purposes or following a promise, as it is mentioned in the paragraph (a)

(bb) to a club or its Council or a member of it or a member of a club or to an athlete of a club to achieve a more favourable results for his or her club and against its rival(s)

Is guilty for having committed an offence and shall be imprisoned for a period not exceeding two years or shall be forced to pay a fine, which should not exceed one thousand pounds or shall be sanctioned both ways:

It is understood that no offence is committed when a club or a member of it promises through its Council or pays allowances of any nature to its athletes, in order to achieve a favourable result for his or her club

(2) Should any act carried out as per the paragraph (1) affect the object, the person who is liable for carrying out this act is facing imprisonment not exceeding three years or is imposed a fine not exceeding thousand five hundred pounds or both sentences.

(3) In this article:

"athlete" means any person involved in sport activities regardless whether he or she is a member of a club or not

"club" means any club or organisation established legally in the Republic aiming at promoting physical education and sport outside school in Cyprus, generally, and the term includes the gymnastic clubs.

(4) No penal prosecution for any offence by virtue of this article may be carried out unless upon the accord of the Attorney General of the Republic.

(5) Despite the provisions of any Law in force, from time to time, any member of the District Competent Court shall have the jurisdiction to judge any offence by virtue of this article and shall impose the sanctions as provided by these provisions.

(6) Any person:

(a) who infringes or neglects to comply with any provision of this Law or with the Regulations edicted by virtue it, in which no specific relevant reference is made, he or she is guilty for having committed an offence and shall be condemned to pay a fine not exceeding hundred pounds and

¹⁰⁷ Translation provided by the Cyprus Sport Organisation.

(b)who disposes any financial and technical assistance of the Cyprus Sports Organisation or any grant of it for any purpose other than the one for which they have been offered, is guilty of having committed an offence and shall be condemned to pay a fine not exceeding hundred pounds. The person condemned shall therefore have to pay a fine equal to the financial and technical assistance or grant given.

2. Penalties

Article 24 (1) – imprisonment for a period not exceeding two years or shall be forced to pay a fine, which should not exceed one thousand pounds (€1,708.60¹⁰⁸) or shall be sanctioned both ways

Article 24 (2) – imprisonment not exceeding three years or is imposed a fine not exceeding thousand five hundred pounds (€2,562.90) or both sentences

Article 24 (6) (a) – a fine not exceeding hundred pounds (€170.86)

Article 24 (6) (b) – a fine not exceeding hundred pounds (€170.86); fine equal to the financial and technical assistance or grant given

3. Jurisprudence

No relevant jurisprudence.

¹⁰⁸ Conversion made in 25/01/2012 with European Central Bank Statistical Data Warehouse.

1. Relevant Provisions¹⁰⁹

Criminal Code, Act No. 40/2009 Coll. of January 8, 2009

Art. 209

Fraud

(1). who enriches himself or herself or another person by bringing someone in error or by using someone's mistake or by concealing substantial facts and thereby causes not negligible damage to foreign property, shall be punished with imprisonment for up to 2 years, prohibition of activities or forfeiture of the cause or other property.

(2) imprisonment of six months to 3 years shall be the punishment for an offender who commits an act described in paragraph 1 and who has already been convicted or punished for such an offence in the previous three years.

(3) imprisonment of one to five years or a fine shall be the punishment for a person who caused through an offence described in paragraph 1 a greater damage.

(4) imprisonment for two to eight years shall be the punishment for an offender,

a) who commits an offense referred to in paragraph 1 as a member of an organized group,

b) who commits such an offense as a person who has the special duty to defend the interests of the victim,

c) who commits such an offense under state of emergency or state of war, during natural disasters or any other event seriously threatening the life or health of people, public order or property, or

d) if such an act causes considerable damage.

(5) imprisonment for five to ten years shall be the punishment of an offender

a) if the offenses referred to in paragraph 1 cause large-scale damage, or

b) if who commits such an act has the intention to allow or facilitate a crime of treason (§ 309), terrorist attack (§ 311) or terror (§ 312).

(6) Preparation is punishable.

§ 331

Acceptance of bribe

(1) Whoever by himself or through another person, in connection with the procurement of items of general interest, for himself or for another person shall give or promise a bribe, or who himself or through another person, in connection with his business or another person's business, for himself or for another person gives or promises a bribe, shall be punished by imprisonment for up to four years or prohibition of activities.

(2) Who in the circumstances referred to in paragraph 1 requests a bribe shall be punished by imprisonment for six months to five years.

(3) Imprisonment for three to ten years or forfeiture of property shall be the punishment if a person

a) commits an offense referred to in paragraph 1 or 2 in the intention to procure himself or any other substantial benefit or

b) commits such an act as an official person.

(4) Imprisonment for a term of five to twelve years shall be the punishment if a person

a) commits an offense referred to in paragraph 1 or 2 in the intention to procure himself or any other large-scale benefit, or

b) commits such an act as an official person in order plan to obtain himself or another person a significant benefit.

¹⁰⁹ Unofficial translation by KEA European Affairs.

§ 332

Corruption

(1) Who offers or promises a bribe to someone or through someone (to third person) in connection with the procurement of items of general interest, or

Who offers or promises a bribe to someone or through someone (to third person) in connection with his business or business of another, shall be punished with imprisonment of up to two years or a fine.

(2) Offender shall be punished by imprisonment for one year to six years, forfeiture of property or fine

a) If he commits an offense referred to in paragraph 1 with the intention to obtain himself or another significant benefit or in intention to cause significant damage to another or to cause other particularly serious consequence, or

b) commits such an offense against the official.

§ 333

Indirect bribery/corruption

(1) Whoever asks for, or accepts a bribe,

In order to influence, either himself or through another person, the exercise of an authority of an official, or for having already done so shall be punished by imprisonment up to three years.

(2) Who, for the reasons referred to in paragraph 1, shall provide, offers or promises a bribe shall be punished by imprisonment up to two years.

§ 334

Common provisions

(1) bribe means an unauthorized advantage which is based on enrichment in the form of asset or other advantage, which is received or is to be received by a bribed person or with his consent (bribed person) to another person; without any entitlement.

(2) Official person under § 331 to 333, in addition to those listed in § 127 shall also mean any person, who

a) performs a function in a legislative body, judicial authority or another public authority in of a foreign country,

b) holds office or employed or working in an international judicial body,

c) holds office or employed or working in an international or multinational organization created by states or other subjects of international law or in its authority or institution, or

d) performs a function in a legal business entity in which the decisive influence is exercised by the Czech Republic or a foreign state, if the performance of such functions, employment or work relates to the competence in providing things of general interest and the crime was committed in connection with this authority.

(3) The procurement of items of general interest is also considered a preservation of obligations imposed by law or assumed by contract, which purpose is to ensure that in business transactions no damage or unreasonable preference be done by participants in these relationships or persons acting on their behalf.

2. Penalties

Art. 209 (1) – imprisonment up to two years; prohibition of activity or forfeiture

Art. 209 (2) – imprisonment for six months to three years

Art. 209 (3) – imprisonment for one year to five years, or fine

Art. 209 (4) – imprisonment for two to eight years

Art. 209 (5) – imprisonment for a term of five to ten years

Art. 331 (1) – imprisonment for up to four years or prohibition of activities
Art. 331 (2) – imprisonment for six months to five years
Art. 331 (3) – imprisonment for three to ten years or forfeiture of property
Art. 331 (4) – imprisonment for a term of five to twelve years
Art. 332 (1) – imprisonment of up to two years or a fine
Art. 332 (2) – by imprisonment for one year to six years, forfeiture of property or fine the
Art. 333 (1) – imprisonment up to three years
Art. 333 (2) – imprisonment up to two years

3. Jurisprudence

Czech Supreme Court of Justice decision of 17 October 2007, T do 510/2007

1. Relevant Provisions

Consolidation Act No. 1235 of 26/10/2010 Historical
(Criminal Law)
Publication Date: 05-11-2010
Justice
Justitsmin., File No. 2009-730-1041
Danish Criminal Code

§279¹¹⁰.

Any person who, for the purpose of obtaining for himself or for others an unlawful gain, by unlawfully bringing about, corroborating or exploiting a mistake, induces any person to do or omit to do an act which involves the loss of property for the deceived person or for others affected by the act or omission, shall be guilty of fraud.

§285

Fraud (§279) is punishable by imprisonment for any term not exceeding one year and six months.

§ 286

Where the offences are of a particularly aggravated nature, especially due to the manner in which they were committed, or because they were committed by several persons in association, or due to the magnitude of the obtained or intended gain, or where a large number of offences have been committed, the penalty may be raised to imprisonment for any term not exceeding eight years

2. Penalties

Section 285 (1) – imprisonment for up to one year and six months
Section 286 (2) – imprisonment for up to eight years

3. Jurisprudence

No jurisprudence according to the information provided by our correspondents.

¹¹⁰ Unofficial translation by the Danish Ministry of Culture.

1. Relevant Provisions¹¹¹

Criminal Code

Passed 6 June 2001

(RT I 2001, 61, 364; consolidated text RT I 2002, 86, 504),

Entered into force 1 September 2002)

Division 2

Offences Against All Types of Property

Subdivision 1

§ 209. Fraud

(1) A person who receives proprietary benefits by knowingly causing a misconception of existing facts shall be punished by a pecuniary punishment or up to 3 years' imprisonment.

(2) The same act, if committed:

1) by a person who has previously committed fraud, larceny or embezzlement;

1¹) by an official;

(24.01.2007 entered into force 15.03.2007 – RT I 2007, 13, 69)

2) on a large-scale basis;

3) by a group or a criminal organisation, or

4) by addressing the public,

is punishable by 1 to 5 years' imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

2. Penalties

Art. 209 (1) – pecuniary punishment or imprisonment up to three years

Art. 209 (2) – imprisonment from one to five years

Art. 209 (3) – pecuniary punishment

3. Jurisprudence

No court decisions.

¹¹¹ Web-link to the English provisions of the Criminal Code (<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30068K8&keel=en&pg=1&ptyyp=RT&tyyp=X&query=karistus>) was provided by Estonian Ministry of Culture

1. Relevant Provisions¹¹²

The Criminal Code of Finland

(39/1889, amendment up to 940/2008 included)

Chapter 30 – Business offences

Section 7 – Bribery in business (Amendment 769/1990)

A person who promises, offers or gives an unlawful benefit (bribe) to

(1) a person in the service of a business,

(2) a member of the administrative board or board of directors, the managing director, auditor or receiver of a corporation or of a foundation engaged in business, or

(3) a person carrying out a duty on behalf of a business, intended for the recipient or another, in order to have the bribed person, in his or her function or duties, favour the briber or another person, or to reward the bribed person for such favouring, shall be sentenced for bribery in business to a fine or to imprisonment for at most two years.

Section 8 – Acceptance of a bribe in business (Amendment 604/2002)

(1) A person who

(1) in the service of a business,

(2) as a member of the administrative board or board of directors, the managing director, auditor or receiver of a corporation or of a foundation engaged in business or

(3) in carrying out a duty on behalf of a business demands, accepts or receives a bribe for himself or herself or another or otherwise takes an initiative towards receiving such a bribe, for favouring or as a reward for such favouring, in his or her function or duties, the briber or another, shall be sentenced for acceptance of a bribe in business to a fine or to imprisonment for at most two years.

Chapter 30

Section 13 – Corporate criminal liability (Amendment 465/2005)

The provisions on corporate criminal liability apply to marketing offences, unfair competition offences, business espionage, misuse of a business secret, bribery in business and acceptance of a bribe in business.

Chapter 36 – Fraud and other dishonesty

Section 1 – *Fraud* (Amendment 769/1990)

(1) A person who, in order to obtain unlawful financial benefit for himself or herself or another or in order to harm another, deceives another or takes advantage of an error of another so as to have this person do something or refrain from doing something and in this way causes economic loss to the deceived person or to the person over whose benefits this person is able to dispose, shall be sentenced for *fraud* to a fine or to imprisonment for at most two years.

¹¹² Translation provided by the Finnish Ministry of Education and Culture.

- (2) Also a person who, with the intention referred to in subsection 1, by entering, altering, destroying or deleting data or by otherwise interfering with the operation of a data system, falsifies the end result of data processing and in this way causes another person economic loss, shall be sentenced for fraud. (514/2003)
- (3) An attempt is punishable.

Chapter 36 Section 2

Section 2 – Aggravated fraud (Amendment 769/1990)

- (1) If the fraud
- (1) involves the seeking of considerable benefit,
 - (2) causes considerable or particularly significant loss
 - (3) is committed by taking advantage of special confidence based on a position of trust or
 - (4) is committed by taking advantage of a special weakness or other insecure position of another and the fraud is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated fraud to imprisonment for at least four months and at most four years.
- (2) An attempt is punishable.

2. Penalties

Chapter 30 Section 7– fine; or imprisonment for two years

Chapter 30 Section 8– fine; or imprisonment for two years

Chapter 36 Section 1 – fine; or imprisonment for two years

Chapter 36 Section 2 – imprisonment for the term of four months to four years

3. Jurisprudence

Decision by the District Court of Vantaa 5 June 2001 and Decision by the Court of Appeal of Helsinki 6 February 2003;

Decision by the District Court of Helsinki 18 December 2007 and Decision by the Court of Appeal of Helsinki 3 April 2009;

Decision by the District Court of Vantaa 6 March 2008 and Decision by the Court of Appeal of Helsinki 27 February 2009;

Decision by the District Court of Lapland 19 July 2011 and Decision by the Court of Appeal of Rovaniemi 22 February 2012.

1. Relevant Provisions

Code Pénal (version consolidée au 5 Novembre 2011)

Article 445-1: Amended by Law no. 2007-1598 of 13 November 2007 – Art. 1 JORF 14 November 2007

Article 445-1, Modifié par LOI n°2011-525 du 17 mai 2011 – art. 154

Est puni de cinq ans d'emprisonnement et de 75 000 euros d'amende le fait, par quiconque, de proposer, sans droit, à tout moment, directement ou indirectement, à une personne qui, sans être dépositaire de l'autorité publique, ni chargée d'une mission de service public, ni investie d'un mandat électif public exerce, dans le cadre d'une activité professionnelle ou sociale, une fonction de direction ou un travail pour une personne physique ou morale ou pour un organisme quelconque, des offres, des promesses, des dons, des présents ou des avantages quelconques, pour elle-même ou pour autrui, pour qu'elle accomplisse ou s'abstienne d'accomplir, ou parce qu'elle a accompli ou s'est abstenue d'accomplir un acte de son activité ou de sa fonction ou facilité par son activité ou sa fonction, en violation de ses obligations légales, contractuelles ou professionnelles.

Est puni des mêmes peines le fait, par quiconque, de céder à une personne visée au premier alinéa qui sollicite, sans droit, à tout moment, directement ou indirectement, des offres, des promesses, des dons, des présents ou des avantages quelconques, pour elle-même ou pour autrui, pour accomplir ou avoir accompli, pour s'abstenir ou s'être abstenue d'accomplir un acte visé audit alinéa, en violation de ses obligations légales, contractuelles ou professionnelles.

Article 445-2, Modifié par LOI n°2011-525 du 17 mai 2011 – art. 154

Est puni de cinq ans d'emprisonnement et de 75 000 euros d'amende le fait, par une personne qui, sans être dépositaire de l'autorité publique, ni chargée d'une mission de service public, ni investie d'un mandat électif public exerce, dans le cadre d'une activité professionnelle ou sociale, une fonction de direction ou un travail pour une personne physique ou morale ou pour un organisme quelconque, de solliciter ou d'agréer, sans droit, à tout moment, directement ou indirectement, des offres, des promesses, des dons, des présents ou des avantages quelconques, pour elle-même ou pour autrui, pour accomplir ou avoir accompli, pour s'abstenir ou s'être abstenue d'accomplir un acte de son activité ou de sa fonction ou facilité par son activité ou sa fonction, en violation de ses obligations légales, contractuelles ou professionnelles.

LOI n° 2012-158 du 1er février 2012 visant à renforcer l'éthique du sport et les droits des sportifs, JORF n°0028 du 2 février 2012 page 1906, texte n° 2.

Article 9

Le code pénal est ainsi modifié :

1° Après l'article 445-1, il est inséré un article 445-1-1 ainsi rédigé :

« Art. 445-1-1.-Les peines prévues à l'article 445-1 sont applicables à toute personne qui promet ou offre, sans droit, à tout moment, directement ou indirectement, des présents, des dons ou des avantages quelconques, pour lui-même ou pour autrui, à un acteur d'une manifestation sportive donnant lieu à des paris sportifs, afin que ce dernier modifie, par un acte ou une abstention, le déroulement normal et équitable de cette manifestation. » ;

2° La section 1 du chapitre V du titre IV du livre IV est complétée par un article 445-2-1 ainsi rédigé :

« Art. 445-2-1.-Les peines prévues à l'article 445-2 sont applicables à tout acteur d'une manifestation sportive donnant lieu à des paris sportifs qui, en vue de modifier ou d'altérer le résultat de paris sportifs, accepte des présents, des dons ou des avantages quelconques, pour lui-même ou pour autrui, afin qu'il modifie, par un acte ou une abstention, le déroulement normal et équitable de cette manifestation. » ;

3° Au premier alinéa des articles 445-3 et 445-4, la référence : « et 445-2 » est remplacée par les références : « , 445-1,445-2 et 445-2-1 ».

2. Penalties

Art. 445-1- prison sentence up to five years and fine up to €75.000

Art. 445-2 – prison sentence up to five years and fine up to €75.000

3. Jurisprudence

Case OM/VA 1993:

Tribunal correctionnel de Valenciennes 15 mai 1995

Cour d'Appel de Douai 28 novembre 1995

Cour de Cassation chambre criminelle 4 février 1997

1. Relevant Provisions¹¹³

Criminal code

(In the version promulgated on 13 November 1998, Federal Law Gazette {Bundesgesetzblatt}

p. 3322, last amended by Article 3 of the Law of 2 October 2009, Federal Law Gazette I p. 3214)

Section 263

(1) Anyone who – with the intent of obtaining for himself or a third person an unlawful material benefit – damages the property of another by causing or maintaining an error by pretending false facts or by distorting or suppressing true facts shall be liable to imprisonment of up to five years or a fine.

(2) The attempt shall be punishable.

(3) In especially serious cases the penalty shall be imprisonment from six months to ten years.

An offense shall be deemed especially serious if the offender

1.Acts on commercial basis or as a member of a gang whose purpose is the continued commission of forgery or fraud

2.Causes a major financial loss or acts with the intent of placing a large number of persons in danger of financial loss by the continued commission of offences of fraud=

3.Places another person in financial hardship

4.Abuses his power or his position as a public official or

5.pretends that an insured event has happened after he or another person have for this purpose set fire to an object of significant value or destroyed it, in whole or in part, through setting fire to it or caused the sinking or beaching of a ship.

(4) Section 243 (2), section 247 and section 248a shall apply mutatis mutandis.

(5) Anyone who on a commercial basis commits fraud as a member of a gang, whose purpose is the continued commission of offences under sections 263 to 264 or sections 267 to 269 shall be liable to imprisonment from one to ten years, in less serious cases to imprisonment from six months to five years.

2. Penalties

Section 263 (1) – imprisonment of up to five years or a fine

Section 263 (3) – imprisonment from six months to ten years

Section 263 (5) – imprisonment from one to ten years, in less serious cases imprisonment from six months to five years

3. Jurisprudence

1.) Judgement rendered on 15 December 2006 by the German Federal Court of Justice against former referee Robert Hoyzer: 2 years and 5 months imprisonment

¹¹³ Translation provided by the German Football Federation.

- 2.) Judgement rendered on 15 December 2006 by the German Federal Court of Justice against former referee Dominik Marks: 1 year and 6 months imprisonment= suspended to probation
- 3.) Judgement rendered on 15 December 2006 by the German Federal Court of Justice against sports bets provider Ante Sapina: 2 years and 11 months imprisonment
- 4.) Judgement rendered on 15 December 2006 by the German Federal Court of Justice against sports bets provider Milan Sapina: 1 year and 4 months imprisonment= suspended on probation
- 5.) Judgement rendered on 15 December 2006 by the German Federal Court of Justice against sports bets provider Filip Sapina: 1 year imprisonment, suspended on probation
- 6.) Judgement rendered in 2007 by the Frankfurt Regional Court against sports bets gambler and agent W.B. LIM: 2 years and 5 months imprisonment
- 7.) Judgement rendered in 2007 by the Frankfurt Regional Court against sports bets gambler and agent Sayed Ali Gamloush: 2 years and 5 months imprisonment
- 8.) Judgement rendered in 2007 by the Frankfurt Regional Court against players Coelho Sebastiao, D. Kumbela, J. Mensah und K. Sprecakovic: Fines of 120 daily rates
- 9.) Judgement rendered on 14 April 2011 by the Bochum Regional Court against sports bets gambler and agent Nuretin Günay: 3 years imprisonment
- 10.) Judgement rendered on 14 April 2011 by the Bochum Regional Court against sports bets gambler and agent Tuna Akbulut: 3 years and 8 months imprisonment
- 11.) Judgement rendered on 14 April 2011 by the Bochum Regional Court against sports bets gambler and agent Stevan Relic: 3 years and 11 months imprisonment
- 12.) Judgement rendered on 16 May 2011 by the Bochum Regional Court against sports bets gambler and agent Marijo Cvrtak: 5 years and 6 months imprisonment
- 13.) Judgement rendered on 16 May 2011 by the Bochum Regional Court against sports bets gambler and agent Ante Sapina: 5 years and 6 months imprisonment
- 14.) Judgement rendered on 16 May 2011 by the Bochum Regional Court against sports bets gambler and agent Dragan Mihelic: 1 year and 6 months imprisonment= suspended on probation.

1. Relevant Provisions¹¹⁴

Law 2725/1999 as amended by Act 3057/2002

Article 132

Corruption – bribery for alteration of the result of the Football Game

1. Anyone who demands or accepts gifts or other benefits or promise thereof, in order to manipulate –in favour or against a sports association, an Athletic Anonymous Society (AAS) or a Department for Salaried Athletes (SAD) – the results of a match, of any team or individual sport that is conducted or is to be performed shall be punished by imprisonment of at least three (3) months and a fine of at least one million (1,000,000) drachmas.

2. The same penalty shall be imposed to anyone under paragraph 1 who offers, gives or promises to an athlete, referee, administrative agent or any other person connected in any way with the athlete, the referee, the union, the AAS or SAD, gifts, benefits or any other benefits.

3. If from the punishable action under the preceding paragraphs the result intended by the perpetrator is achieved, then he is punished with imprisonment of at least six (6) months and a fine of at least two million (2,000,000) drachmas.

4. In addition to the above penalties, to the persons who commit offenses under paragraphs 1 to 3 of this article, disciplinary sanctions are imposed, in accordance with the provisions of Article 130, for violation of sportsmanship.

5. If the persons prosecuted for offenses in paragraphs 1, 2 and 3 of this article are athletes, coaches, trainers, administrators, or members of a sports association, an AAS or a SAD, disciplinary sanctions of either the removal of points from the league table of the ongoing or upcoming championship or of the near championship, in which they will participate, or the relegation of these to the next lower category are imposed by the competent disciplinary body of the relevant sports federation or the relevant professional association to the association group, the AAS or the SAD that these persons belong to. In accordance with the precedent paragraphs, the disciplinary proceedings, prosecution and sentencing, are autonomous and independent from the criminal trial in which the culpable persons are referred to, because of the performance of the above offenses. "

2. Penalties

Article 132 (1). – imprisonment of three months, a fine of one million drachmas (€2,934.70¹¹⁵)

Article 132 (2) – imprisonment of three months, a fine of one million drachmas (€2,934.70)

Article 132 (3) – imprisonment of six months, a fine of two million drachmas (€5,869.41)

3. Jurisprudence

No case law.

¹¹⁴ Translation provided by the Greek Permanent Representation to the European Union.

¹¹⁵ Conversion made in 25/01/2012 with European Central Bank Statistical Data Warehouse.

1. Relevant Provisions¹¹⁶

The Hungarian Criminal Code (Act Nr. IV of 1978)

Fraud

Section 318

(1) The person who – for unlawful profit-making – leads somebody into error or keeps in error and causes damage thereby, commits fraud.

(2) The punishment shall be for a misdemeanour imprisonment of up to two years, labour in the public interest, or fine, if the fraud causes a smaller damage, or the fraud not exceeding the value limit for minor offence is committed

a/ as part of a criminal conspiracy,

b/ on the scene of public danger,

c/ in a business-like manner.

(4) The punishment shall be for a felony imprisonment of up to three years, if

a/ the fraud causes a greater damage,

b/ the fraud causing a smaller damage is committed in the manner defined in subsection (2), paragraphs *a/* to *c/*.

(5) The punishment shall be imprisonment from one year to five years, if

a/ the fraud causes considerable damage,

b/ the fraud causing greater damage is committed in the manner defined in subsection (2), paragraphs *a/* to *c/*.

(6) The punishment shall be imprisonment from two years to eight years, if

a/ the fraud causes an especially great damage,

b/ the fraud causing a considerable damage is committed in the manner defined in subsection (2), paragraphs *a/* to *c/*.

(7) The punishment shall be imprisonment between five to ten years for the crime of fraud if committed

a/ causing particularly substantial damage,

b/ causing particularly considerable damage in the manner described in Paragraphs *a/*–*c/* of Subsection (2) above.

2. Penalties

Art. 318 (2) – imprisonment up to two years, labour in the public interest, or fine, if the fraud causes a smaller damage, or the fraud not exceeding the value limit for minor offence is committed

Art. 318 (4) – imprisonment of up to three years

Art. 318 (5) – imprisonment from one year to five years

Art. 318 (6) – imprisonment from two years to eight years

Art. 318 (7) – imprisonment between five to ten years

3. Jurisprudence

No cases.

¹¹⁶ Translation provided by the Ministry of National Resources of Hungary.

1. Relevant Provisions

Number 50 of 2001

Criminal Justice (theft and fraud offences) Act, 2001

Section 6. Making gain or causing loss by deception

(1) A person who dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception induces another to do or refrain from doing an act is guilty of an offence.

A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both.

2. Penalties

Section 6 – maximum of five years of imprisonment or fine or both

3. Jurisprudence

Not provided by the respondent.

1. Relevant Provisions¹¹⁷

Legge 13 dicembre 1989, n. 401: truffa sportiva

Art. 1. Fraud in sports competitions.

1. Any person who offers or promises money or other benefits or inducements to any participant in a sports competition organised by any association recognised by the Italian National Olympic Committee (CONI), the Italian National Horse Breeding Union (UNIRE) or any other State-recognised sports body and its member associations, in order to achieve a result that is different from one resulting from fair and proper competition, that is to say, commits fraudulent acts for such purpose, shall be punished by imprisonment for between one month and one year and shall receive a fine ranging from five hundred thousand to two million lira. Minor cases shall be liable to a fine only.

2. The same punishment shall be applied to participants in competitions who accept money, other benefits or advantages, or who willingly accept any promises of the same.

3. If the result of a competition is influenced to suit the purposes of organised betting or gambling, the activities outlined in paragraphs 1 and 2 shall be punishable by imprisonment for between three months and two years and a fine of between five million and fifty million lira.

Art. 3 Obligation to report

The presidents of national sports federations affiliated to the Italian National Olympic Committee (CONI), the chairmen of the boards of discipline of second order of the same federations and corresponding bodies responsible for the discipline of entities and associations referred to in paragraph 1 of article 1, which, in the exercise of their duties or because of their functions, heard news of the crimes referred to in Article. 1, are obliged to report this, under existing laws, to the judicial authority.

2. Penalties

Art. 1 (1) – imprisonment for between one month and one year and shall receive a fine from five hundred thousand to two million lira (€258.23 -1.032.91¹¹⁸)

Art. 1 (1) – a fine for the minor cases

Art. 1 (2) – imprisonment for between one month and one year and shall receive a fine from five hundred thousand to two million lira (€258.23 -1.032.91); a fine for the minor cases

Art. 1 (3) – imprisonment for between three months and two years and a fine of between five million and fifty million lira (€2,582.28 – 25,822.84)

3. Jurisprudence

Decision No. 13328/08 R. G. Tribunale, No. 276865/06 N.R. by the Court of Naples

Decision No. 12562 of 2010 by the Supreme Court of Appeal

¹¹⁷ Unofficial translation by Libero Language Lab.

¹¹⁸ Conversion made in 25/01/2012 with European Central Bank Statistical Data Warehouse.

1. Relevant Provisions¹¹⁹

Criminal Code (as last amended on June 6, 2009) (LV028)

Section 177. Fraud

(1) For a person who commits acquiring property of another, or of rights to such property, by the use, in bad faith, of trust, or by deceit (fraud), the applicable sentence is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding sixty times the minimum monthly wage.

(2) For a person who commits fraud, if commission thereof is repeated, or by a group of persons pursuant to prior agreement, the applicable sentence is deprivation of liberty for a term not exceeding six years, or with confiscation of property, or a fine not exceeding one hundred times the minimum monthly wage.

(3) For a person who commits fraud, if it has been committed on a large scale, or has been committed in an organised group, or it has been committed, acquiring narcotic, psychotropic, powerfully acting, poisonous or radioactive substances or explosive substances, firearms or ammunition, the applicable sentence is deprivation of liberty for a term of not less than five years and not exceeding thirteen years, or a fine not exceeding one hundred and fifty times the minimum monthly wage, with or without confiscation of property, and with or without police supervision for a term not exceeding three years.

2. Penalties

Section 177 (1) – imprisonment for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding sixty times the minimum monthly wage.

Section 177 (2) – imprisonment for a term not exceeding six years, or with confiscation of property, or a fine not exceeding one hundred times the minimum monthly wage

Section 177 (3) – imprisonment for a term of not less than five years and not exceeding thirteen years, or a fine not exceeding one hundred and fifty times the minimum monthly wage, with or without confiscation of property, and with or without police supervision for a term not exceeding three years

3. Jurisprudence

No relevant jurisprudence.

¹¹⁹ Translation provided by the Ministry of Education and Science of Latvia.

1. Relevant Provisions¹²⁰

Republic of Lithuania
Criminal Code
26 September 2000 no VIII –1968
(as last amended on 23 December 2011)

Article 182. Fraud

1. A person who, by deceit, acquires another's property for own benefit or for the benefit of other persons or acquires a property right, avoids a property obligation or annuls it shall be punished by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.

2. A person who, by deceit and for own benefit or for the benefit of other persons, acquires another's property of a high value or a property right or the valuables of a considerable scientific, historical or cultural significance or avoids a property obligation of a high value or annuls it or swindles by participating in an organised group shall be punished by imprisonment for a term of up to eight years.

3. A person who, by deceit and for own benefit or for the benefit of other persons, acquires another's property of a low value or acquires a property right, avoids a property obligation of a low value or annuls it shall be considered to have committed a misdemeanour and shall be punished by community service or by a fine or by restriction of liberty or by arrest.

4. A person shall be held liable for the acts provided for in paragraphs 1 and 3 of this Article only subject to a complaint filed by the victim or a statement by his authorised representative or at the prosecutor's request.

5. Legal entities shall also be held liable for the acts provided for in paragraphs 1 and 2 of this Article.

2. Penalties

Art. 182 (1) – community service; fine; restriction of liberty or by arrest or imprisonment for a term of three years

Art. 182 (2) – imprisonment for a term of up to eight years

Art. 182 (3) – community service or by a fine or by restriction of liberty or by arrest

3. Jurisprudence

No cases.

¹²⁰ Translation located in the official web-page of the Parliament of Lithuania:
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=366707&p_query=&p_tr2=2#

1. Relevant Provisions

Criminal Code, Consolidated version of Act 18 June 1879

Art. 310. (L. 13 février 2011) Est puni d'un emprisonnement d'un mois à cinq ans et d'une amende de 251 euros à 30.000 euros, le fait par une personne qui a la qualité d'administrateur ou de gérant d'une personne morale, de mandataire ou de préposé d'une personne morale ou physique, de solliciter ou d'accepter de recevoir, directement ou par interposition de personnes, une offre, une promesse ou un avantage de toute nature, pour elle-même ou pour un tiers, ou d'en accepter l'offre ou la promesse, pour faire ou s'abstenir de faire un acte de sa fonction ou facilité par sa fonction, à l'insu et sans l'autorisation, selon le cas, du conseil d'administration ou de l'assemblée générale, du mandant ou de l'employeur.

Article 310-1 du Code pénal

Est puni des mêmes peines le fait, par quiconque, de proposer ou de donner, directement ou par interposition de personnes, à une personne qui a la qualité d'administrateur ou de gérant d'une personne morale, de mandataire ou de préposé d'une personne morale ou physique, une offre, une promesse ou un avantage de toute nature, pour elle-même ou pour un tiers, ou d'en faire l'offre ou la promesse, pour faire ou s'abstenir de faire un acte de sa fonction ou facilité par sa fonction, à l'insu et sans l'autorisation, selon le cas, du conseil d'administration ou de l'assemblée générale, du mandant ou de l'employeur.

2. Penalties

Art. 310 – From one month to five years of imprisonment and a fine from €251 to €30,000

3. Jurisprudence

No jurisprudence

1. Relevant Provisions¹²¹

Prevention of Corruption (players) Act 1976

ACT XIX of 1976, as amended by Acts XIII of 1983 and XXIV of 2001 and Legal Notice 423 of 2007

Chapter 263

Article 3 (1) Any player who accepts or obtains, or agrees to accept or obtain, or attempts to obtain, from any person for himself or for any other person whomsoever any gift or consideration as an inducement or reward for doing or for omitting from doing, or for having, after the enactment of this Act, done or omitted from doing, any act the doing or omission of which is against the interests of the side for which he plays, or those of the person or club by whom or by which he is engaged or whom or which he represents, shall be guilty of an offence.

(2) Any official or organiser who accepts or obtains, or agrees to accept or obtain, or attempts to obtain, from any person for himself or for any other person whomsoever any gift or consideration as an inducement or reward for doing or for omitting from doing, or for having, after the enactment of this Act, done or omitted from doing, any act in relation to any game or sport in or with which he is concerned, other than such as is lawfully due to him, or for showing or exercising favour or disfavour to any person or side taking part in any game or sport, or for otherwise influencing the course or result of any game or sport, shall be guilty of an offence.

(3) Any person who gives, or agrees to give or offers or proposes to another person, directly or indirectly, that such other person should give or agree to give or offer any gift or consideration to any player or to any official or organiser as an inducement or reward for doing or for omitting from doing, or for having, after the commencement of this Act, done or omitted from doing any act which, if done or omitted, would be in contravention of subarticle (1) or (2), shall be guilty of an offence.

(4) Any official, player or organiser who has knowledge, whether verbally, in writing, or otherwise, that an offence has been committed against any of the provisions of article 3, shall communicate such knowledge to the Commissioner of Police and, if he fails to do so within a period of three months from the date in which he became aware of such knowledge, he shall be guilty of an offence: Provided that this section shall not apply to the husband or wife, the ascendants or descendants, the brother or sister, the father-in-law or mother-in-law, the son-in-law or daughter-in-law, the uncle or aunt, the nephew or niece, and the brother-in-law or sister-in-law of a principal or an accomplice in the crime so not disclosed.

(6) No gift or other consideration given or offered to any player by the management or by any member of the committee of the club to which such player is attached or engaged (provided such member has been previously authorised so to do by the committee of the said club) shall be deemed to be in contravention of any provision of this Act if such gift or consideration is offered or given and accepted for genuine efforts by the player concerned in furtherance of the interests of the club in question.

(7) Where two or more persons take part in the commission of any offence against any of the provisions of this Act, any one of them who, prior to the initiation of any criminal proceedings, gives first information thereof and reports the other offender or offenders to the competent authorities shall be exempt from punishment.

¹²¹ Translation provided by Malta's Sports Council.

Article 9 (1) Saving the provisions of article 8, any person who is guilty of an offence against –

(a) the provisions of article 3 shall be liable, on conviction, to a fine (multa) of not less than four hundred and sixty-five euro and eighty-seven cents (€465.87) but not exceeding two thousand an three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) and to imprisonment for a term of not less than four months but not exceeding two years;

(b) the provisions of article 4 shall be liable –

(i) on a first conviction, to a fine (multa) of not less than two hundred and thirty-two euro and ninety-four cents (€232.94) but not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69), or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment, and

(ii) on a second or subsequent conviction, to a fine (multa) of not less than four hundred and sixty-five euro and eighty-seven cents (€465.87) but not exceeding two thousand an three hundred and twenty-nine euro and thirty-seven cents (€2,329.37), and to imprisonment for a term from four months to six months.

(2) In the case of a prosecution under the provisions of this Act, any person who in any way whatsoever has taken part in the commission of an offence, and whose evidence is required in support of such charge, shall be compellable to answer any question respecting that charge, notwithstanding that the answer thereto will expose him to criminal prosecution; but in any such event, any person who shall have given evidence in respect of such charge, and who shall have made a true and faithful statement touching such charge, to the best of his knowledge, shall thereupon obtain from the court a certificate to that effect, and he shall, in consequence, be exempted from all punishment in respect of his participation in the offence forming the subject-matter of the charge upon which he gave evidence as witness.

2. Penalties

Art. 9 (1) (a) – fine of €465.87 – 2,329.37 and imprisonment from four months to two years

Art. 9 (1) (b) – first conviction: fine of €232.94 – 1,164.69; or imprisonment for a term not exceeding three months or both; second conviction: fine of €465.87 – 2,329.37, and imprisonment for a term from four months to six months

3. Jurisprudence

Il-Pulizija v. Jeffrey Camilleri (348/2010): Court of Criminal Appeal (DS) 4 th May 2011.

Il-Pulizija vs Claude John Mattocks (111/2009)

Il-Pulizija vs Emanuel Ancilleri (60/2009)

Il-Pulizija vs Clyde Grech (527/2009): Court Of Magistrates (AM)

Il-Pulizija (Angelo Gafa') vs Peter Joseph Hartshorne (205/2009)

Il-Pulizija Vs Gatt Andrea (1278/2008)

Il-Pulizija Vs Lawrence Mizzi (1279/2008)

1. Relevant Provisions¹²²

Act of March 3, 1881

Wetboek van Strafrecht (Criminal Code)

Article 326

1. He who, with the intention to favour himself or another unlawfully, either by adopting a false name or a false appearance, or by vicious tricks, or by a fabric of lies, entices someone to hand over a good, to provide a service, to place at someone's disposal data, to enter into a debt or to annul a debt, is considered to be guilty of fraud, punished with a prison sentence of a maximum four years or a fine of the fifth category.

2. In case the act is committed with the intention to prepare a terrorist offence or to facilitate it, the prison sentence is increased by one third.

2. Penalties

Art. 326 – imprisonment of four years maximum, fine of the fifth category (€ 67.000¹²³)

3. Jurisprudence

Not provided by the respondent

¹²² Unofficial translation by KEA European Affairs.

¹²³ As provided by the Ministry of Health, Welfare and Sport of the Netherlands.

1. Relevant Provisions¹²⁴

Act of 25 June 2010 on Sport (Journal of Laws No. 127, item 857, as amended)

Article 46.

1. Whoever, in connection with sports competitions organised by a Polish sports association or by an entity acting on the basis of a contract concluded with that association, or by an entity acting with the authorisation of the association, derives financial or personal benefit or the promise thereof, or demands such benefit or the promise thereof in exchange for dishonest conduct that could influence the outcome of such competitions, shall be liable on conviction to imprisonment for a term from 6 months to 8 years.

2. Any person who gives or promises such material or personal benefits, as described in paragraph 1, shall be liable on conviction to the same punishment.

3. In cases of lesser significance, anyone who commits the acts described in paragraph 1 or 2 shall be liable on conviction to a fine, restriction of liberty or imprisonment for a term not exceeding 2 years.

4. If the value of the material benefit referred to in paragraph 1 or 2 is significant, any person who has accepted the material benefit or promise of such benefit, or has given or promised such benefit, or has demanded such a benefit or promise of such benefit shall be liable on conviction to imprisonment for a term from 1 year to 10 years

Article 47.

"Whoever, possessing information regarding the commission of an act prohibited as defined in Article 46, takes part in betting activities involving sports competitions that are related to this information or discloses this information with the aim of encouraging someone else to participate in such betting activities, is subject to a prison sentence from 3 months up to 5 years"

Article 48.

1. Whoever, by utilising their own influence within a Polish sports association, or that of an entity acting on the basis of a contract concluded with that association, or that of an entity acting with the authorisation of the association, or by causing a third party to believe or confirming a third party in their belief that such influence exists, acts as an intermediary to bring about a specific outcome of a sports event in exchange for financial or personal benefit or the promise thereof, is subject to a prison sentence from 6 months up to 8 years.

2. The same penalty applies to any person who provides or promises to provide financial or personal benefit in exchange for mediation in bringing about a specified outcome in sports competitions by exerting an unlawful influence on officials of a Polish sports association, or of an entity acting on the basis of a contract concluded with that association, or of an entity acting with the authorisation of the association, in the execution of their official duties.

3. In cases of lesser significance, a perpetrator of acts described in paragraphs 1 or 2 shall be liable on conviction to a fine, restriction of liberty or imprisonment for a term not exceeding 2 years.

¹²⁴ Translation provided by the Polish Ministry of Sport and Tourism.

A person who has committed a crime specified in Article 46 paragraph 2, Article 46 paragraph 3 or 4, in connection with paragraph 2, or in Article 48 paragraph 2 or 3, in connection with paragraph 2, shall not be punishable, if the material or personal benefit or a promise of such benefit has been accepted, and the perpetrator immediately notifies the competent law enforcement body and reveals all the important circumstances of the crime before that law enforcement body discloses them otherwise.

2. Penalties

Art. 46 (1) – imprisonment from six months up to eight years.

Art. 46 (2) – imprisonment from six months up to eight years.

Art. 46 (3) – fine, restriction of liberty or imprisonment for up to two years

Art. 46 (4) – imprisonment from one year up to ten years

Art. 47 – imprisonment from three months to five years

Art. 48 (1) – imprisonment from six months to eight years

Art. 48 (2) – imprisonment from six months to eight years

Art. 48 (3) – fine, restriction of liberty or imprisonment up to two years

3. Jurisprudence

Case of Polar Wrocław (2006);

Case of Arka Gdynia (2007);

Case of Korona Kielce (2008);

Case of Górnik Polkowice (2010);

Case of KSZO Ostrowiec Świętokrzyski / Ceramika Opoczno / Stasiak Opoczno (2010);

Case of Motor Lublin (2011);

Case of Zagłębie Lubin and Cracovia Kraków (2011).

1. Relevant Provisions¹²⁵

Law nr. 50/2007 of August 31, 2007 Revoking Decree Law No. 390/91, dated 10th October, except Article 5.

Act which establishes a new regime of criminal liability of conducts capable of affecting the truth, loyalty and fairness of the sport competition and its outcome;

Chapter 1

Article 5

Concurrence

The exercising of punitive action or application of sentences or restrictions to freedom for the criminal offences outlined in this law does not impede, suspend or obstruct the exercising of disciplinary powers or the application of disciplinary sanctions under the terms of the sports regulations.

Article 7

Subsidiarity

The provisions for the criminal offences outlined in this law are applicable in addition to the provisions of the Criminal Code.

CHAPTER II

Criminal offences

Article 8

Passive corruption

A sports agent who directly, or upon his consent or approval, through an intermediary, requests or accepts for himself or on behalf of a third party improper material or non-material gain, or the promise of such gain, in return for any act or omission intended to alter or falsify the result of a sports competition shall be punished by imprisonment for a duration of 1 to 5 years.

Article 9

Active corruption

1 – Any person who directly, or upon his consent or approval, through an intermediary, gives or promises improper material or non-material gain to a sports agent, or a third party in the knowledge of the said sports agent, for the purpose described in the previous article, shall be punishable by imprisonment for up to 3 years or by a financial penalty.

¹²⁵ Unofficial translation by Libero Language Lab.

2 – Any attempt to perpetrate such criminal offences shall also be punishable by law.

Article 10

Influence peddling

1 – Any person who directly, or upon his consent or approval, through an intermediary, requests or accepts for himself or on behalf of a third party improper material or non-material gain, or the promise of such gain, to abuse his real or supposed influence on any sports agent, in order to obtain an agreement to alter or falsify the result of a sports competition shall be punishable by imprisonment of up to 3 years or a financial penalty, in the event that such person is not liable to receive a heavier punishment by means of another legal provision.

2 – Any person who directly, or upon his consent or approval, through an intermediary, gives or promises improper material or non-material gain to another person for the purpose described in the previous clause shall be punishable by imprisonment for a duration of up to 2 years or by a daily financial penalty, accruing for up to 240 days, in the event that such person is not liable to receive a heavier punishment by means of another legal provision.

Article 11

Criminal collusion

1 – Any person who organises, sets up, participates in or supports a group, organisation or association whose purpose or activity is designed to achieve the perpetration of one or more of the criminal activities outlined in this law shall be punishable by imprisonment for a duration of 1 to 5 years.

2 – Any person who leads or organises the groups, organisations or associations referred to in the previous clause shall be punishable by the sentence stipulated therein, whereby the maximum and minimum sentence shall be increased by one third.

3 – For the purposes of this article, a group, organisation or association is defined as a group of at least three people acting in a concerted manner during a given period of time.

Article 12

Heavier sentences

1 – The minimum and maximum sentences outlined in Article 8 and Article 10(1) shall be increased by one third if the accused party is a sports director, referee, agent or club.

2 – If the criminal activities outlined in Article 9 and Article 10(2) are perpetrated in relation to any of the entities referred to in the previous clause, the sentence shall be applied in accordance with the particular case, and the minimum and maximum sentences increased by one third.

2. Penalties

Art. 8 – Prison sentence from one to five years

Art. 9 – Prison sentence up to three years, or fine

Art. 10 – Passive peddling of influence: prison sentence up to three years or fine; Active peddling of influence: prison sentence up to two years or by a daily financial penalty, accruing for up to 240 days.

Art. 11 – Prison sentence from 1 up to 5 years.

Heavier sentences: see art. 12

3. Jurisprudence

10/30/1997 Judgment of the Supreme Court SJ199710300002303

1. Relevant Provisions¹²⁶

Criminal code (republished in the Romanian Official Gazette no. 65 of 16th of April 1997)

Art. 254 – Taking a bribe

(1) The deed of the official who, directly or indirectly, requests or receives money or other advantages which are not due to the official, or accepts or does not reject the promise of such advantages for the purpose of accomplishing or not accomplishing or delaying the accomplishment of an act related to his duty attributions or for the purpose of acting against these duties, is punished with imprisonment from 3 to 12 years and the interdiction of certain rights.

(2) The deed provided in para. (1), if it is committed by an official with control attributions, is punished with imprisonment from 3 to 15 years and the interdiction of certain rights.

(3) The money, valuables or any other goods that made the object of taking the bribe shall be confiscated and if they cannot be found, it is mandatory for the convicted person to pay their equivalent in money.

Art. 255 – Giving a bribe

(1) Promising, offering or giving money or other advantages, in the ways and purposes set out in art. 254, are punished with imprisonment from 6 months to 5 years.

(2) The above mentioned deed is not considered an offence when the person giving the bribe was constrained by any means by the person taking the bribe.

(3) The person giving the bribe is not punished if he/she informs the authorities about it before criminal investigation bodies are notified of the offence.

(4) The provisions of art. 254 para. (3) are applied accordingly, even though the offer was not followed by an acceptance.

(5) The money, valuables or any other goods are returned to the person who gave them in the cases mentioned in para. (2) and (3).

Art. 256 – Receiving undue advantages (by an official)

(1) The deed of receiving, directly or indirectly, money or other advantages by an official, after he/she accomplished an act by virtue of his/her position and which he/she is compelled to accomplish by the nature of his/her position, is punished with imprisonment from 6 months to 5 years.

(2) The money, valuables or any other goods that were received shall be confiscated and if they cannot be found, it is mandatory for the convicted person to pay their equivalent in money.

¹²⁶ Translation provided by the Ministry of Justice of Romania.

Art. 257 – Trading in influence

(1) The receipt or the request for money or other advantages or the acceptance of promises, gifts, directly or indirectly, for himself or for another, by a person who has influence or lets the other believe she/he has influence over an official to make him/her accomplish or fail to accomplish an act that is part of the latter's duty attributions, shall be punished by 2 to 10 years' imprisonment.

(2) The provisions of art. 256 para. (2) are accordingly applied.

According to Article 147 from the current Criminal Code:

"Public official" refers to any person who temporarily or permanently performs, in any position, regardless of how the person was appointed, a task of any nature, remunerated or not, in the service of a unit among those provided by Article 145.

"Official" refers to the person mentioned in paragraph 1, as well as any employee who performs a task in the service of another legal person other than those provided by that paragraph."

Article 145 defines the notion of „public“ as follows:

The term "public" means everything related to public authorities, institutions, other legal persons of public interest, administration, the use or exploitation of public owned assets, public services, as well as assets of any kind that, according to the law, are of public interest."

Law no. 78/2000 on preventing, discovering and sanctioning of corruption acts

Section 2 – Corruption offences

Art. 6

The offences of taking a bribe, provided in art. 254 from the Criminal Code, of giving a bribe, provided in art. 255 in the Criminal Code, of receiving undue advantages, provided in art. 256 in the Criminal Code and of trading of influence, provided in art. 257 of the Criminal Code, are punished according to those texts of law.

Art. 61

(1) Promising, offering or giving money, gifts or other advantages, directly or indirectly, to a person who has influence or lets the other think (s)he has influence over an official to make him/her accomplish or fail to accomplish an act that is part of the latter's duty attributions, is punished by 2 to 10 years imprisonment.

(2) The perpetrator is not punished if (s)he denounces the act before the criminal investigation body is notified about that act.

(3) The money, valuables or any other goods which represented the object of the offence provided in paragraph (1) are confiscated and if they are not found the convicted person is compelled to pay for their equivalent in money.

(4) The money, valuables or any other goods are given back to the person who gave them in the case provided in paragraph (2).

The future criminal provisions are as follows (Future Criminal code – Law no. 286/2009), expected to enter into force in 2013.

- art. 289 (Taking bribe)
- art. 290 (Giving bribe)
- art. 291 (Influence peddling)
- art. 292 (Buying of influence)
- art. 308 (Corruption and office offences committed by other persons)
- art. 309 (Deeds that resulted in very serious consequences).

2. Penalties

Art. 254 (1) – imprisonment from three to twelve years (aggravating circumstances up to fifteen years) and interdiction of certain rights

Art. 254 (2) – imprisonment from three to fifteen years and the interdiction of certain rights

Art. 254 (3) – confiscation of valuables or any other goods

Art. 255 – imprisonment from six months to five years

Art. 256 (1) – imprisonment from six months to five years

Art. 256 (2) – confiscation of valuables or any other goods

Art. 257 – imprisonment from two to ten years

Art. 6 – imprisonment from two to ten years; confiscation of valuables or any other goods

3. Jurisprudence

No decisions from the Court .

1. Relevant Provisions¹²⁷

Act No. 300/2005 Criminal Code, 20 May 2005

§ 221 (Fraud)

Who enriches themselves or others to the detriment of property of another by causing someone to err, or by using someone else's mistake, and causes a minor damage to property to another, shall be punished by imprisonment of up to two years.

§ 328 (accepting a bribe)

"Who either directly or through an intermediary for himself or for another person, receives, requests or accepts the promise of a bribe to act or refrain from acting in such a way that he violates his obligations under the employment, occupation, position or function, shall be punished by imprisonment for two years up to five years."

§ 332 (bribery)

Whoever directly or through an intermediary promises to offer or give a bribe to another to act or refrain from acting in such a way that violates their obligations under the employment, occupation, position or function, or for the same reason directly or through an intermediary promises, offers or bribes another person, shall be punished by imprisonment of up to three years.

§ 336 sec. 2 (indirect corruption)

Whoever, directly or through intermediary promises, offers or bribes another in order to use their influence to affect the exercise of jurisdiction by the person described in § 332 or § 333, or for having had done so already, and for this reason gives, offers or promises a bribe to another person, shall be punished by imprisonment of up to two years

§ 375 (damaging foreign rights)

Who will cause serious harm to the rights of another through

a) causing someone to err or

b) using someone else's mistake

shall be punished by imprisonment of up to two years.

¹²⁷ Unofficial translation provided by the Comenius University in Bratislava, Faculty of Law.

2. Penalties

§ 221 – two years of imprisonment

§ 328– imprisonment from two to five years

§ 332 – up to three years of imprisonment

§ 336 sec. 2 – up to two years of imprisonment

§ 375 – up to two years of imprisonment

3. Jurisprudence

Not provided by the respondent

1. Relevant Provisions

Criminal Code of Slovenia, Official Journal 55/2008

Fraud¹²⁸

Article 211

(1) Whoever, with the intention of acquiring unlawful property benefit for himself or a third person by false representation, or by the suppression of facts leads another person into error or keeps him in error, thereby inducing him to perform an act or to omit to perform an act to the detriment of his or another's property, shall be sentenced to imprisonment for not more than three years.

(2) Whoever, with the intention as referred to in the preceding paragraph of this Article, concludes an insurance contract by stating false information, or suppresses any important information, concludes a prohibited double insurance, or concludes an insurance contract after the insurance or loss event have already taken place, or misrepresents a harmful event, shall be sentenced to imprisonment for not more than one year.

(3) If the fraud was committed by at least two persons who colluded with the intention of fraud, or if the perpetrator committing the offence referred to in paragraph 1 of this Article caused large-scale property damage, the perpetrator shall be sentenced to imprisonment for not less than one, and not more than eight years.

(4) If the offence referred to in paragraphs 1 or 3 of this Article was committed within a criminal association, the perpetrator shall be sentenced to imprisonment for not less than one, and not more than ten years

(5) If a minor loss of property has been incurred by the committing of the offence under paragraph 1 of this Article and if the perpetrator's intention was to acquire a minor property benefit, he shall be punished by a fine or sentenced to imprisonment for not more than one year.

(6) Whoever, with the intention of causing damage to another person by false representation or the suppression of facts, leads a person into error or keeps him in error, thereby inducing him to perform an act or to omit to perform an act to the detriment of his or another's property shall be punished by a fine or sentenced to imprisonment for not more than one year.

(7) The prosecution for the offences under paragraphs 5 and 6 of this Article shall be initiated upon a complaint.

Criminal Association

Article 294

(1) Whoever participates in a criminal association which has the purpose of committing criminal offences for which a punishment by imprisonment of more than three years, or a life sentence may be imposed, shall be punished by imprisonment of three months up to five years.

(2) Whoever establishes or leads an association as referred to in the preceding paragraph, shall be punished by imprisonment of six months up to eight years.

¹²⁸ English translation on <http://www.wipo.int/wipolex/en/details.jsp?id=6074>, confirmed by the Ministry of Education and Sports

(3) A perpetrator of a criminal offence from the preceding paragraphs who prevents further commission of these offences or discloses information which has a bearing on the investigation and proving of criminal offences that have already been committed, may have his punishment for these offences mitigated, in accordance with Article 51 of this Criminal Code.

Criminal Conspiracy

Article 295

Whoever agrees to commit a criminal offence with another, for which a punishment exceeding five years' imprisonment or a heavier sentence may be imposed, shall be sentenced to imprisonment for not more than one year.

2. Penalties

- Art. 211 (1) – imprisonment for not more than three years
- Art. 211 (2) – imprisonment for not more than one year
- Art. 211 (3) – imprisonment for not less than one, and not more than eight years
- Art. 211 (4) – imprisonment for not less than one, and not more than ten years
- Art. 211 (5) – fine or sentenced to imprisonment for not more than one year
- Art. 211 (6) – fine or sentenced to imprisonment for not more than one year
- Art. 294 (1) – imprisonment of three months up to five years
- Art. 294 (2) – imprisonment of six months up to eight years
- Art. 295 – imprisonment for not more than one year

3. Jurisprudence

No cases.

1. Relevant Provisions

Article 286 bis Criminal Code (Organic Law 10/1995 as ammended by Law 5/2010)¹²⁹

Bribery (Active/Passive corruption)

Article 286 bis

1. Whoever, personally or through an intermediary, promises, offers or grants executives, directors, employees or collaborators of a trading company or any other firm, partnership, foundation or organisation an unfair benefit or advantage of any nature, in order for the to favour him or a third party against others, breaching their obligations in acquisition or sale of goods or in hiring of professional services, shall be punished with a sentence of imprisonment of six months to four years, special barring from practice of industry or commerce for a term from one to six years and a fine of up to three times the value of the value of the profit or advantage obtained.

2. The same penalties shall be imposed on executives, directors, employees or collaborators of trading companies, or firms, associations, foundations or organisation who, personally or through an intermediary, receive, request or accept a benefit or advantage of any unjustified nature, in order to favour whoever grants, or whoever expects the profit or advantage over third parties, breaching their obligations in the acquisition or the sale of goods or in the hiring professional services.

3. The Judges and Courts of Law may impose a lower degree of punishment and reduce the fine, at their prudent criteria, in view of the amount of profit obtained or value of the advantage and the importance of the duties of the offender.

4. The terms set forth this Article shall be applicable, in the respective cases, to executives, directors, employees or collaborators of a sporting company, whatever its legal status, as well as sportsmen, referees or judges, regarding conduct aimed at deliberately and fraudulently predetermining or altering the result of a professional sport match, game or competition.

2. Penalties

Art. 286bis (1) – prison sentence from six months to four years; prison sentence from one to six years and fine of three times the value of the benefit or advantage

Art. 286bis (2) – same penalty

3. Jurisprudence

No relevant jurisprudence.

¹²⁹ Translation provided by the ONCE Organización Nacional de Ciegos Españoles – ONCE (European Lotteries questionnaire).

1. Relevant Provisions

Swedish Criminal Code

Ds 1999:36

Chapter 17¹³⁰

On Crimes against Public Activity

Section 7

A person who gives, promises or offers a bribe or other improper reward to an employee or other person defined in Chapter 20, Section 2, for the exercise of official duties, shall be sentenced for bribery to a fine or imprisonment for at most two years. (Law 1977:103)

Chapter 20

Section 2

An employee who receives, accepts a promise of or demands a bribe or other improper reward for the performance of his duties, shall be sentenced for taking a bribe to a fine or imprisonment for at most two years. The same shall apply if the employee committed the act before obtaining the post or after leaving it. If the crime is gross, imprisonment for at most six years shall be imposed.

The provisions of the first paragraph in respect of an employee shall also apply to:

1. a member of a directorate, administration, board, committee or other such agency belonging to the State, a municipality, county council, association of local authorities, parish, religious society, or social insurance office,
2. a person who exercises a assignment regulated by statute,
3. a member of the armed forces under the Act on Disciplinary Offences by Members of the Armed Forces, etc. (1986:644), or other person performing an official duty prescribed by Law,
4. a person who, without holding an appointment or assignment as aforesaid, exercises public authority, and
5. a person who, in a case other than stated in points 1–4, by reason of a position of trust has been given the task of managing another's legal or financial affairs or independently handling an assignment requiring qualified technical knowledge or exercising supervision over the management of such affairs or assignment.

¹³⁰ Translation provided by the Ministry of Justice of Sweden (<http://www.sweden.gov.se/sb/d/574/a/27777>).

A new Government Bill¹³¹ will introduce provision dealing with passive and active bribery in connection with all contests that are open to organised and legitimate betting. The amendments are proposed to come into force on 1 July 2012.

Amended wording of the active and passive bribery provisions proposed in a proposal referred to the Council of Legislation for consideration.

Chapter 10 Section 5 a¹³²

A person who is employed or otherwise performs a task and receives, accepts a promise of or demands an undue advantage for the performance of his duties, shall be sentenced for *reception of a bribe* to a fine or imprisonment for at most two years. The same shall apply to a contestant or official in a contest open to organised and legitimate betting in relation to undue advantages for the fulfilment of his or her tasks in the contest.

The first paragraph shall apply also if the perpetrator committed the act before obtaining a position mentioned there or after leaving it.

The provisions in the first and second paragraph shall also be applied if the perpetrator receives, accepts a promise of or demands the advantage for anyone else.

Section 5 b

A person who gives, promises or offers an undue advantage in a situation as defined in Section 5 a shall be sentenced for *giving of a bribe* to a fine or imprisonment for at most two years.

Section 5 c

If a crime defined in Sections 5 a or b is regarded as gross, imprisonment for at least six months and at most six years shall be imposed for *gross reception of a bribe* or *gross giving of a bribe*. In assessing whether the crime is gross, special consideration shall be given to whether the act included an abuse of or an infringement on a function involving particular responsibility, involved a substantial amount of money or formed part of a criminal activity that was systematically practised or practised on a larger scale or was of an especially dangerous nature.

2. Penalties

Chapter 17, section 7 – fine or imprisonment for at most two years

Chapter 20, section 2 – fines or imprisonment up to two years; imprisonment of six years under aggravating circumstances

3. Jurisprudence

Not provided by the respondent.

¹³¹ The proposal referred to the Council of Legislation is A reformed legislation on bribery. Lagrådsremiss. En reformerad mutbrottslagstiftning. 26/01/2012.

¹³² Unofficial translation provided by the Ministry of Justice.

1. Relevant Provisions

British Gambling Act 2005

Chapter 19

Section 42 of the Gambling Act 2005 states:

- (1) A person commits an offence if he—
 - (a) cheats at gambling, or
 - (b) does anything for the purpose of enabling or assisting another person to cheat at gambling.
- (2) For the purposes of subsection (1) it is immaterial whether a person who cheats—
 - (a) improves his chances of winning anything, or
 - (b) wins anything.
- (3) Without prejudice to the generality of subsection (1) cheating at gambling may, in particular, consist of actual or attempted deception or interference in connection with—
 - (a) the process by which gambling is conducted, or
 - (b) a real or virtual game, race or other event or process to which gambling relates.
- (4) A person guilty of an offence under this section shall be liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding 51 weeks, to a fine not exceeding the statutory maximum or to both.
- (5) In the application of subsection (4) to Scotland the reference to 51 weeks shall have effect as a reference to six months.
- (6) Section 17 of the Gaming Act 1845 (c 109) (winning by cheating) shall cease to have effect.

Criminal Law Act 1977

1977 Chapter 45

1. The offence of conspiracy.

(1) Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either—

(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or

(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible, he is guilty of conspiracy to commit the offence or offences in question.

(2) Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit that offence by virtue of subsection (1) above unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.

(4) In this Part of this Act "offence" means an offence triable in England and Wales

3. Penalties for conspiracy.

(1) A person guilty by virtue of section 1 above of conspiracy to commit any offence or offences shall be liable on conviction on indictment—

(a) in a case falling within subsection (2) or (3) below, to imprisonment for a term related in accordance with that subsection to the gravity of the offence or offences in question (referred to below in this section as the relevant offence or offences); and

(b) in any other case, to a fine.

Paragraph (b) above shall not be taken as prejudicing the application of section 127 of the Powers of Criminal Courts (Sentencing) Act 2000 (general power of court to fine offender convicted on indictment) in a case falling within subsection (2) or (3) below.

(2) Where the relevant offence or any of the relevant offences is an offence of any of the following descriptions, that is to say—

(a) murder, or any other offence the sentence for which is fixed by law;

(b) an offence for which a sentence extending to imprisonment for life is provided; or

(c) an indictable offence punishable with imprisonment for which no maximum term of imprisonment is provided, the person convicted shall be liable to imprisonment for life.

(3) Where in a case other than one to which subsection (2) above applies the relevant offence or any of the relevant offences is punishable with imprisonment, the person convicted shall be liable to imprisonment for a term not exceeding the maximum term provided for that offence or (where more than one such offence is in question) for any one of those offences (taking the longer or the longest term as the limit for the purposes of this section where the terms provided differ).

In the case of an offence triable either way the references above in this subsection to the maximum term provided for that offence are references to the maximum term so provided on conviction on indictment.

Prevention of corruption act 1906

1906 Chapter 34 6 Edw 7

Punishment of corrupt transactions with agents.

1) If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal:

he shall be guilty of a misdemeanour, and shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both.}

(2) For the purposes of this Act the expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another; and the expression "principal" includes an employer.

(3) A person serving under the Crown or under any corporation or any . . . , borough, county, or district council, or any board of guardians, is an agent within the meaning of this Act.

(4) For the purposes of this Act it is immaterial if—

(a) the principal's affairs or business have no connection with the United Kingdom and are conducted in a country or territory outside the United Kingdom;

(b) the agent's functions have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom.}

2. Penalties

British Gambling Act 2005 – Two years of imprisonment or fine (or both) – conviction indictment; 51 week of imprisonment or fine (or both) – summary conviction

Criminal Law Act 1977 – to imprisonment for a term related in accordance with that subsection to the gravity of the offence or offences in question; fine

Prevention of corruption act 1906 – on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding; on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both the statutory maximum, or to both

3. Jurisprudence

Southwark Crown Court

03/11/2011 Case no. T20117139, Cheating at gambling or assisting another person to cheat, corrupt transactions with agents

Mohammad Amir, Mohammad Asif, Salman Butt, Mazhar Majeed

ANNEX 2 – OFFENCES AND PENALTIES – RECAPITULATIVE TABLE

Country	Offence	Penalty
Austria	Fraud (Article 146, Criminal Code)	Article 146 – imprisonment up to six months or a fine punishment of up to 360 daily rates
	Serious Fraud (Article 147, Criminal Code)	Art. 147 (1) – imprisonment up to three years; Art. 147 (2) – € 3000 damage Art. 147 (3) – if damage is up to €50 000 up to 10 years of imprisonment
Belgium	Passive corruption (Article 504bis, Criminal Code)	Art. 504ter § 1 st – imprisonment for six months to two years or fine of €100 to €10, 000
	Active corruption (Article 504bis, Criminal Code)	Art. 504ter § 2 – imprisonment for six months to three years or fine of €100 to €50, 000
Bulgaria	Sports Fraud (Article 307b, Criminal Code)	Article 307b – prison sentence from one to six years; fine from one thousand to ten thousand leva (€ 511.30 – 5,113.33)
	Bribery (Article 307c, Criminal Code)	Art. 307c – prison sentence from one to six years; fine from five thousand to fifteen thousand leva (€ 2,556.50 – 7,699.50) Art. 307c (3) – prison sentence of up to three years; fine of up to five thousand leva (€ 2,556.50)
	Aggravating circumstances (Article 307d, Criminal Code)	Art. 307d(1) – imprisonment from two to eight years and a fine from ten thousand to twenty thousand leva (€5,113 – 10,225.99) Art. 307d. (2) – imprisonment from three to ten years and a fine from fifteen thousand to thirty thousand leva (€7,669.50–15,338.99)
Cyprus	Article 24, the Cyprus Sport Organisation Law	Article 24 (1) – imprisonment for a period not exceeding two years or shall be forced to pay a fine, which should not exceed one thousand pounds (€1,708.60 ¹³³) or shall be sanctioned both ways Article 24 (2) – imprisonment not exceeding three years or is imposed a fine not exceeding thousand five hundred pounds (€2,562.90) or both sentences Article 24 (6) (a) – a fine not exceeding hundred pounds (€170.86) Article 24 (6) (b) – a fine not exceeding hundred pounds (€170.86); fine equal to the financial and technical assistance or grant given
Czech Republic	Fraud (Article 209, Criminal Code)	Art. 209 (1) – imprisonment up to two years; prohibition of activity or forfeiture; Art. 209 (2) – imprisonment for six months to three years Art. 209 (3) – imprisonment for one year to five years, or fine Art. 209 (4) – imprisonment for two to eight years Art. 209 (5) – imprisonment for a term of five to ten years
	Acceptance of bribe (Article 331, Criminal Code)	Art. 331 (1) – imprisonment for up to four years or prohibition of activities Art. 331 (2) – imprisonment for six months to five years Art. 331 (3) – imprisonment for three to ten years or forfeiture of property Art. 331 (4) – imprisonment for a term of five to twelve years
	Corruption (Article 332, Criminal Code)	Art. 332 (1) – imprisonment of up to two years or a fine Art. 332 (2) – by imprisonment for one year to six years, forfeiture of property or fine
	Indirect bribery/corruption (Article 333, Criminal Code)	Art. 333 (1) – imprisonment up to three years Art. 333 (2) – imprisonment up to two years
Denmark	Fraud (Section 279, Criminal Code)	Section 285 (1) – imprisonment for up to one year and six months Section 286 (2) – imprisonment for up to eight years
Estonia	Fraud (Article 209, Criminal Code)	Art. 209 (1) – pecuniary punishment or imprisonment up to three years Art. 209 (2) – imprisonment from one to five years Art. 209 (3) – pecuniary punishment
Finland	Business offences (chapter 30, Section 7, Criminal Code)	Chapter 30 Section 7 – fine; or imprisonment for two years

¹³³ Conversion made in 25/01/2012 with European Central Bank Statistical Data Warehouse.

¹³⁴ Ibid.

	Acceptance of a bribe in business (Chapter 30, Section 8, Criminal Code)	Chapter 30 Section 8 – fine; or imprisonment for two years
	Fraud and other dishonesty (Chapter 36, Section 1, Criminal Code)	Chapter 36 Section 1 – fine; or imprisonment for two years
	Aggravated fraud (Chapter 36, Section 2, Criminal Code)	Chapter 36 Section 2 – imprisonment for the term of four months to four years
France	Active bribery (Article 445-1, Criminal Code)	Art. 445-1– prison sentence up to five years; fine up to €75.000
	Passive bribery (Article 445-2, Criminal Code)	Art. 445-2 – prison sentence up to five years; fine up to €75.000
Germany	Fraud (Section 263, para 1-5, Criminal Code)	Section 263 (1) – imprisonment of up to five years or a fine Section 263 (3) – imprisonment from six months to ten years Section 263 (5) – imprisonment from one to ten years, in less serious cases imprisonment from six months to five years
Greece	Taking a bribe; Giving a bribe (Article 132, Law 2725/1999)	Article 132 (1). – imprisonment of three months, a fine of one million drachmas (€2.934.70) ¹³⁵ Article 132 (2) – imprisonment of three months, a fine of one million drachmas (€2.934.70) Article 132 (3) – imprisonment of six months, a fine of two million drachmas (€5.869.41)
Hungary	Fraud (Section 318, Criminal Code)	Art. 318 (2) – imprisonment up to two years, labour in the public interest, or fine, if the fraud causes a smaller damage, or the fraud not exceeding the value limit for minor offence is committed Art. 318 (4) – imprisonment of up to three years Art. 318 (5) – imprisonment from one year to five years Art. 318 (6) – imprisonment from two years to eight years Art. 318 (7) – imprisonment between five to ten years
Ireland	Making gain or causing loss by deception (Section 6, Theft and fraud offences, Criminal Justice Act)	Section 6 – maximum of 5 years of imprisonment or fine or both
Italy	Fraud in sports competitions (Article 1, L. 401/1989)	Art. 1 (1) – imprisonment for between one month and one year and shall receive a fine from five hundred thousand to two million lira (€258.23 –1032.91) ¹³⁶ Art. 1 (1) – a fine for the minor cases Art. 1 (2) – imprisonment for between one month and one year and shall receive a fine from five hundred thousand to two million lira (€258.23 –1032.91); a fine for the minor cases Art. 1 (3) – imprisonment for between three months and two years and a fine of between five million and fifty million lira (€2.582.28 – 25.822.84)
	Obligation to report (Article 3, L. 401/1989)	
Latvia	Fraud (Section 177, Criminal Code)	Section 177 (1) – imprisonment for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding sixty times the minimum monthly wage. Section 177 (2) – imprisonment for a term not exceeding six years, or with confiscation of property, or a fine not exceeding one hundred times the minimum monthly wage Section 177 (3) – imprisonment for a term of not less than five years and not exceeding thirteen years, or a fine not exceeding one hundred and fifty times the minimum monthly wage, with or without confiscation of property, and with or without police supervision for a term not exceeding three years
Lithuania	Fraud (Article 182, Criminal Code)	Art. 182 (1) – community service; fine; restriction of liberty or by arrest or imprisonment for a term of three years Art. 182 (2) – imprisonment for a term of up to eight years Art. 182 (3) – community service or by a fine or by restriction of liberty or by arrest
Luxembourg	Taking a bribe/giving a bribe (Articles 310 and 310-1, Criminal Code)	Art. 310 – from one month to five years of imprisonment and a fine from €251 to €30.000
Malta	Chapter 263 (Prevention of Corruption (players) Act 1976): Giving bribe; Accepting a bribe; Giving someone bribe to bribe a player.	Art. 9 (1) (a) – fine of €465.87 – 2,329.37 and imprisonment from four months to two years Art. 9 (1) (b) – first conviction: fine of €232.94 – 1,164.69; or imprisonment for a term not exceeding three months or both; second conviction: fine of €465.87 – 2,329.37, and imprisonment

¹³⁵ Conversion made in 25/01/2012 with European Central Bank Statistical Data Warehouse.

¹³⁶ Ibid.

	official or organiser; Duty to report corrupt practice.	for a term from four months to six months
Netherlands	Fraud (Article 326, Criminal Code)	Art. 326 – imprisonment of four years maximum, fine of the fifth category (€ 67.000)
Poland	Bribery (Active/Passive corruption) (Article 46, Act on Sport)	Art. 46 (1) – imprisonment from six months up to eight years. Art. 46 (2) – imprisonment from six months up to eight years. Art. 46 (3) – fine, restriction of liberty or imprisonment for up to two years Art. 46 (4) – imprisonment from one year up to ten years
	(Article 47, Act on Sport)	Art. 47 – imprisonment from three months to five years
	(Article 48, Act on Sport)	Art. 48 (1) – imprisonment from six months to eight years Art. 48 (2) – imprisonment from six months to eight years Art. 48 (3) – fine, restriction of liberty or imprisonment up to two years
Portugal	Passive corruption (Article 8 of Law no. 50/2007)	Art. 8 – prison sentence from one to five years
	Active corruption (Article 9 of Law no. 50/2007)	Art. 9 – prison sentence up to three years, or fine
	Peddling of influence (Articles 10 of Law no. 50/2007)	Art. 10 – passive peddling of influence: prison sentence up to three years or fine; Active peddling of influence: prison sentence up to two years or by a daily financial penalty, accruing for up to 240 days.
	Criminal collusion (Article 11 of Law no. 50/2007)	Art. 11 – prison sentence from 1 up to 5 years. Heavier sentences: see art. 12
Romania	Taking a bribe (Article 254, Criminal Code)	Art. 254 (1) – imprisonment from three to twelve years (aggravating circumstances up to fifteen years) and interdiction of certain rights Art. 254 (2) – imprisonment from three to fifteen years and the interdiction of certain rights Art. 254 (3) – confiscation of valuables or any other goods
	Giving a bribe (Article 255, Criminal Code)	Art. 255 – imprisonment from six months to five years
	Receiving undue advantages (Article 256, Criminal Code)	Art. 256 (1) – imprisonment from six months to five years Art. 256 (2) – confiscation of valuables or any other goods
	Trading in influence (Article 257, Criminal Code)	Art. 257 – imprisonment from two to ten years
	Corruption offences (Articles 6 and 6' of the Law no. 78/2000)	Art. 6 – imprisonment from two to ten years; confiscation of valuables or any other goods
Slovakia	Fraud (§ 221, Criminal Code)	§ 221 – two years of imprisonment
	Accepting a bribe (§328, Criminal Code)	§ 328 – imprisonment from two to five years
	Bribery (§ 332, Criminal Code)	§ 332 – up to three years of imprisonment
	Indirect corruption (§ 336 sec. 2, Criminal Code)	§ 336 sec. 2 – up to two years of imprisonment
	Damaging Foreign rights (§ 375 of the Criminal Code)	§ 375 – up to two years of imprisonment
Slovenia	Fraud (Article 211, Criminal code)	Art. 211 (1) – imprisonment for not more than three years Art. 211 (2) – imprisonment for not more than one year Art. 211 (3) – imprisonment for not less than one, and not more than eight years Art. 211 (4) – imprisonment for not less than one, and not more than ten years Art. 211 (5) – fine or sentenced to imprisonment for not more than one year Art. 211 (6) – fine or sentenced to imprisonment for not more than one year
	Criminal Association (Article 294, Criminal Code)	Art. 294 (1) – imprisonment of three months up to five years Art. 294 (2) – imprisonment of six months up to eight years

	Criminal conspiracy (Article 295, Criminal Code)	Art. 295 – imprisonment for not more than one year
Spain	Bribery(Active/Passive corruption) (Article 286 bis, Criminal Code)	Art. 286bis (1) – prison sentence from six months to four years; prison sentence from one to six years and fine of three times the value of the benefit or advantage Art. 286bis (2) – same penalty
Sweden	Giving bribe (Chapter 17 Section 7, Criminal Code)	Chapter 17, section 7 – fine or imprisonment for at most two years
	Receiving bribe (Chapter 20, Section 2 of the Criminal Code)	Chapter 20, section 2 – fines or imprisonment up to two years; imprisonment of six years under aggravating circumstances
United Kingdom	Cheating (Section 42, Gambling Act 2005)	British Gambling Act 2005 – two years of imprisonment or fine (or both) – conviction indictment; 51 week of imprisonment or fine (or both) – summary conviction
	The offence of conspiracy (Criminal Law Act 1977)	Criminal Law Act 1977 – to imprisonment for a term related in accordance with that subsection to the gravity of the offence or offences in question; fine
	Corruption (Prevention of corruption act 1906)	Prevention of corruption act 1906 – on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding; on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both the statutory maximum, or to both

ANNEX 3 –DISCIPLINARY DECISIONS

Disciplinary decisions – information provided by national football associations (through UEFA)

Country	Information provided by the correspondents
Disciplinary decision	
Czech Republic	Decision 5/2009 SK Sigma Olomouc – FK Bohemians Praha. Disciplinary Committee of Czech FA deducted 9 points from Sigma and fined the club. The goalkeeper was banned for 2 years for bribing the players.
Denmark	Two cases solved and one under investigation. All three cases were about individuals betting on their own games. In the two solved cases players were warned by the Football Association.
Estonia	The Estonian Football Association made two sporting decisions to ban players: in 2008 banned three players (one got a three-year ban, two others – two-year ban), in 2010 banned one player for the arrangement of bets.
Finland	In 2011, 11 players have been given sanctions for taking bribes (nine got temporary suspension, because the case is not yet finalised, two other players were given two-year suspension).
Germany	In the 2004/2005 season 5 disciplinary decisions with sanctions such as life bans and suspensions were made. In the season 2007/2008 4 decisions imposing fines were made. The season of 2010/2011 is related to the proceedings as a part of the "Bochum Public Prosecution Dept. and Regional Court" – over 17 disciplinary decisions made and over 12 proceedings are still pending.
Greece	Numerous cases have been solved in 2011.
Italy	Totonero 1980 scandal Totonero 1986 scandal where teams were relegated and received the deduction of points. In the Calciopoli 2006 scandal five football clubs received punishments from the Italian Football Association (also relegation and deduction of points, games played behind closed doors). Scommessopoli 2011 scandal I
Latvia	By decision in October 2011 Latvian Football Association excluded FC Dinaburg from the LMT Virsliga 2009.

Additionally, Austria, Belgium, France, Ireland, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Sweden and United Kingdom were the Member Associations did not experience any disciplinary decisions in relation to match-fixing.

Bulgaria, Cyprus, Hungary, Lithuania, Malta, Netherlands and Spain did not provide responses to our questionnaires.

ANNEX 4 – ONGOING INVESTIGATIONS

Ongoing police investigations (by February 2010)

<u>Country</u>	<u>Information provided by the correspondents</u>
Austria	Ongoing investigations (confidential information)
Belgium	Ongoing investigations in Belgium are linked to the German football scandal, where investigations are being performed by the Bochum Prosecutors (Germany).
Czech Republic	Only one case is under investigation – corruption case on attempt to manipulate results of a match between SK Sigma Olomouc v FK Bohemians Praha in season 2008/2009 where four people (players and officials) were charged with bribing.
Germany	There are ongoing investigations on the matches across Germany, Belgium, Switzerland, Croatia, Slovenia, Turkey, Hungary, Bosnia and Herzegovina and Austria.
Greece	There are ongoing investigations after UEFA gave Greek authorities a list of 41 match results from 2009–2010 season which they believed to be suspicious.
Hungary	Ongoing investigations that involves a player's agent and a footballer in Hungary over allegations on attempting to fix the outcome of three Hungarian football matches in 2009.
Italy	Ongoing investigations on match-fixing and illegal betting allegations in Serie B after arrests in June 2011.
Malta	There are ongoing investigations related to Bochum investigations in Germany
Poland	Several investigations. Since 2004 allegations by District Prosecutor's Office in Wrocław and Appellate Prosecutor's Office in Wrocław are still pending.
Portugal	New investigations ongoing regarding referees.
Romania	The National Anti-corruption Directorate (DNA) opened investigations on 18 managers of football teams and managers of the Romanian Football Federation in 2008. Investigations were closed by the prosecutors before reaching the courts. Additionally, the 2nd league of the Romanian football championship is under the suspicion of match-fixing.
Slovenia	The ongoing investigations in Slovenia linked to the match-fixing scandal in Germany (an affair in Duisburg in relation eight football matches in Slovenia in the seasons of 2009 and 2010).

United Kingdom	There are several ongoing police investigations that could lead to criminal sanctions, including one in snooker and one in football (confidential information, no further details).
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ANNEX 5 – SURVEY PARTICIPANTS

MEMBER STATES

28 National administrations in 27 MS:

Austria – The Ministry of Defence and Sports

Belgium – The Flemish Ministry for finance, budget, work, town and country planning and sports/Wallonia Ministry of the budget, of finance, employment, training and sport

Bulgaria – The Ministry of Physical Education and Sports

Cyprus – The Ministry of Education and culture(Cyprus Sport Organisation)

Czech Republic – The Ministry of Education, Youth and Sports

Denmark – The Ministry of Culture

Estonia – The Ministry of Culture

Finland – The Ministry of Education and Culture

France – The Ministry of Sports

Germany – The Federal Ministry of Interior

Greece – The Ministry of Culture and Tourism

Hungary – The Ministry of National Resources

Ireland – The Ministry of Transport, Tourism and Sport

Italy – The Office for the Sport Presidency of the Council of the Ministers

Latvia – The Ministry of Education and Science

Lithuania – The Department of Physical Education and Sports under the Government of the Republic of Lithuania

Luxembourg – The Ministry of Sports

Malta – The Secretary to the Parliamentary Secretary for Youth and Sport

Netherlands – The Ministry of Health, Welfare and Sport

Poland – The Ministry of Sport and Tourism

Portugal – The Secretary of State for Sport and Youth

Romania – The Ministry of Education, Research, Youth and Sports (the National Authority for Sports and Youth; the Ministry of Justice)

Slovak Republic – The Ministry of Education, Science, Research and Sport

Slovenia – The Ministry of Education and Sport
Spain – The Presidency of the Government High Council of Sport
Sweden – The Ministry of Culture
United Kingdom – The Department for Culture, Media and Sport (UK Gambling Commission).
In total: 28 answers¹³⁷

SPORT ORGANISATIONS

3 sports organisations contacted that disseminated questionnaires to their members: 1. European Rugby Association (FIRA–AER), 2. International Tennis Federation (ITF), 3. Union of European Football Associations (UEFA)
Answers: 1. FIRA–AER (7 answers): - Austria, - Denmark, - France, - Hungary, - Italy, - the Netherlands, - and Sweden 2. ITF (4 answers): - Belgium, - Germany, - Portugal, - and Romania 3. UEFA (33 answers): Member States (22 answers): - Austria, - Belgium, - Czech Republic, - Denmark, - Estonia, - Finland, - France, - Germany, - Greece,

¹³⁷ Romania provided separate questionnaires from the National Authority for Sports and Youth and from the Ministry of Justice. The total amount of answers to the questionnaire is 28.

- Ireland,
- Italy,
- Malta,
- Latvia,
- Luxembourg,
- Portugal,
- Romania,
- Slovakia,
- Slovenia,
- Sweden,
- and UK (+ Northern Ireland and Scotland)

Non-Member States (12 answers):

- Armenia
- Azerbaijan
- Bosnia and Herzegovina
- Faroe Islands
- Georgia
- Iceland
- Israel
- Norway
- San Marino
- Serbia
- Switzerland
- Turkey

In total: 45 answers

BETTING OPERATORS

3 betting organisations contacted:

1. European Lotteries
2. European Gaming and Betting Association (EGBA)
3. Remote Gambling Association (RGA)

Answers :

1. European Lotteries (24 answers):

Member States (21 answers):

- Austria (Österreichische Lotterien)
- Bulgaria (Eurofootball Ltd., Bulgarian Sport Totalisator)
- Czech Republic (Sazka)
- Denmark (Danske Spil)
- Finland (Veikkaus)
- France (La Française des jeux)
- Germany (Deutscher Lotto- und Totoblock (DLTB))
- Greece (OPAP)
- Hungary (Szerencsejáték Zrt.)

- Ireland (National Lottery Ireland)
- Italy (Lottomatica, SISAL)
- Lithuania (Olifeja)
- Poland (Totalizator Sportowy)
- Portugal (Jogos Santa Casa)
- Slovakia (Tipos)
- Slovenia (Sportna Loterija)
- Spain (ONCE, SELAE)
- Sweden (Svenska Spel)

Non-member states (3 answers):

- Iceland (Islensk Getspa)
- Norway (Norsk Tipping)
- Switzerland (Swissloss)

2. EGBA (1 answer)

3. RGA (1 answer)

In total: 26 answers

OTHER ENTITIES

1. Autorité de Régulation des Jeux en Ligne (ARJEL)

2. European Sports Security Association (ESSA)

In total: 2 answers

ANNEX 6 – LIST OF INTERVIEWS

1. Ali Khalid (European Sports Security Association – ESSA) – 23/11/2011
2. Brost Stefan (DFB – Deutscher Fußball-Bund) – 25/11/2011
3. Caruana Leonard, Dr. B.A., LL.D., M.A. (Fin. Serv) Lawyer in private practice, Malta, 30/1/2012
4. Cartoux Florian, Ligné Sigrid (European Gaming and Betting Association – EGBA) – 23/11/2011
5. Chadwick Simon (Coventry University Business School) – 17/11/2011
6. Cornu Pierre (Integrity and regulatory affairs, UEFA) – 1/12/2011
7. Criado Ana María (Spain, Presidency of the Government High Council of Sport) – 16/11/2011
8. *Direction des affaires pénales et judiciaires, ministère de la Justice* (Luxembourg) – 3/10/2011
9. Fisas Santiago (MEP, author of the EP report "European Dimension of Sport") – 7/2/2012.
10. Folker David (Dataco) – 23/01/2012
11. Foley-Train Jason (Remote Gambling Association – RGA) – 24/11/2011
12. Fonteneau Mathieu (Policy Officer, CNOSF, France) – 2/09/2011
13. Frossard Stanislas (Enlarged Partial Agreement on Sport – EPAS) – 18/1/2012
14. Gábriš Tomáš (Slovakia, Comenius University in Bratislava, Faculty of Law) – 30/11/2011
15. von-Greyerz Walo (Sweden, Ministry of Justice) – 2/12/2011
16. Hauschild Robert (Organised crime department, Europol) – 2/12/2011
17. Hill Declan (journalist, author of "the Fix") – 19/01/2012
18. Hornig Rupert (European Lotteries), – 24/11/2011
19. Kalb Cristian (SportAccord/CK Consulting) – 3/11/2011
20. Klaan Margus (Estonia, Ministry of Culture) – 8/12/2011
21. Korolis Kyriakos (Greece, Ministry of Culture and Tourism) – 19/1/2012
22. Kos Drago (Group of States Against Corruption – GRECO) – 24/11/2011
23. Kuipers (International Association of Prosecutors) – 10/2/2012
24. Muller Araújo, Guilherme (Portugal, Legal Advisor to the Secretary of State for Sport and Youth) – 30/1/2012.
25. Mulac Robert (DG MARKT, business-to-customer services, gambling; sport related services) – 13/1/2012
26. Moreuil Mathieu and Coward Nic (Premier League)

27. Palmer Walter (EU Athletes) – 23/11/2011
28. Stefanuc Raluca (DG HOME, policy officer, fight against corruption) – 20/01/2012
29. Thomas-Trophime, Cecile and Larlus-Lefebvre, Caroline Autorite de Regulation des Jeux en Ligne (ARJEL) – 1/2/2012
30. Vanden Eynde Johan (*Sports lawyer*) – 20/10/2011
31. Zylberstein Julien, EU Legal Affairs Advisor, UEFA – 05/10/2012
32. 2 Belgian prosecutors– 8/11/2011.

