



The Council of Europe Convention on the Manipulation of Sport Events is a Vital First Step Towards Preserving the Integrity of Sports and Legitimate Gambling.

By Philippe Vlaemminck, Partner, ALTIUS;
Chair of EU, Lotteries, Gambling & Sport Law Group
& Bart Van Vooren, Senior Associate, ALTIUS



The integrity of sports and the inviolability of its competitive character is crucial for any stakeholder, including the supporter and participant, amateur or professional. Manipulating sports competitions through cor-

ruption of the persons involved is a fundamental threat to sports, and no discipline is immune. Recent scandals across the US, Australia, and more recently Europe, illustrate that this phenomenon can be found in any sports, be it soccer or chess, cricket or snooker; and in all divisions at both at the professional and amateur levels.

There are two main categories of match-fixing, divided according to the objective that the perpetrators are attempting to accomplish. On the one hand, they may seek to influence certain interests within the sport itself. On the other hand, it may be related to games of chance and attempts to launder money. Two short examples may illustrate this. In the first case, a sports club may seek to avoid being demoted to a lower rank or class, by influencing a competition to their benefit. In the second instance, the manipulator of the competition can seek to attain a certain outcome, and bet (large) sums of money on an outcome which he knows with a great degree of certainty. In the latter case, it can be standalone fraudulent behavior, or it can be an attempt to launder money from illegal activities so that they appear as legitimate proceeds from a game of chance.

Given the importance of protecting the integrity of sports, as well as securing public order and public security, the Council of Europe, Japan, Australia, Canada, New Zealand, Morocco, the European Union, as well as the Member States of the Council of Europe and the EU are preparing a host of measures to attack the challenge of match-fixing.

So as to create a European (and even partially global legal framework in combating match-fixing) in June 2012 the Council of Europe started negotiations on a framework Convention against Match-fixing in the context of the 'Enlarged Partial Agreement of Sport'. The expectation is that this Convention will be opened for signature in December 2014.

The goal of this Convention is to organize a pan-European (and even larger collaboration between public entities, sports organisations and gambling operators) for the purpose of creating a legal framework for the prevention, detection and sanctioning of the manipulation of sports competitions in the Contracting States to the Convention. While the legal obligations in this Convention will be relatively open-ended, there are a number of important innovations. One is the creation of so-called 'national platforms' by the Parties. These platforms will play both a passive and active role in combating match-fixing. At both the national and transnational levels, the objective is that they will function as an information hub between competent authorities and stakeholders in the sports and betting sectors, also undertaking a proactive role in the coordination of the fight against match-fixing. The Treaty does not contain further details on the nature of this coordination, but the text expressly requires both national and international coordination.

Although this text is a step in the right direction, many important questions remain unanswered. We provide two examples to highlight this point.

First, the text of the convention shows that these national platforms will need to provide information on possible infractions of the law, and that they will have to collaborate with all relevant authorities including national platforms of other states. Which are the relevant authorities is unclear for instance, do they include police and judicial authorities? Without further guidance, the legal form and competences of these national platforms is sure to be significantly diverse. This may hamper the effective implementation of the Convention. In this respect, an important point of discussion in the Council of Europe has been the fact that these national platforms ought to erect a monitoring system. The draft versions of the Convention at one point contained such an obligation, then saw it removed, only to have it reinserted. As we will indicate further in this article, we believe that a strong policy against match-fixing includes adequate monitoring of sports events to a high standard of efficacy; one that is independent, and ensures interoperability between detection systems.

Second, during the latest negotiations between November 2013 and January 2014, the text of the Convention was at risk to be amend-

ed with a definition of “illegal betting” which was potentially very harmful for the public gaming sector. Namely, the match-fixing Convention will capture both betting and non-betting related match-fixing, and has a number of definitions of activities that will fall within the scope of its legal obligations. To that end, the Convention defines what constitutes “illegal betting.” At the outset of the drafting process of the Convention, illegal betting had been defined as follows: “all sports betting activity whose type or operator are not allowed, in accordance with the applicable law of the jurisdiction where the consumer is located.” However, during the negotiations in November 2013, a different definition emerged defining illegal sports betting as an “activity whose type or operator is not allowed within the jurisdiction of the State Party in accordance with applicable law.” From a European perspective the impact is potentially significant.

What is more, the new proposed definition, if it would remain in the final text, can be read as having the consequence that as long as something is legal in one signatory to the Convention (for example: Malta), betting cannot be considered illegal in the other signatory to the Convention as well (for example: Belgium). However, whereas operators in Malta and Gibraltar are offering their products in line with the law in the jurisdiction where they are based, they are not necessarily complying with the laws in the country of the consumer. This would be problematic within the Member States of the European Union, since gambling policies in the EU states (as it is also the case in the US states and elsewhere in the world) revolve around the policy choices of each (Member) State of consumption individually. Such a new definition could give rise to a long string of legal battles before the European Court of Justice, since this international agreement might be invoked to attack Member States’ legislations. A strong campaign of many states, supported by their state owned lotteries, has currently made it possible that such bad definition was rejected.

Moving from the level of the Council of Europe to the European Union (the former is the international organization that also comprises non-European Union countries), we also see that the EU is going to act in the field of match-fixing. Specifically, by the end of 2014 we may expect the European Commission to publish “recommendations concerning the prevention and fight against manipulation of sports competitions related to games of chance.” While ‘recommendations’ are non-binding in comparison to actual legislative instruments, they carry great political weight and may be used as interpretative instruments before the courts. The recommendations from the European Commission will also be far more detailed than the general framework Convention, and hence they will almost certainly put significant flesh on the bones of these rather general treaty obligations.

In terms of content, these recommendations will tackle a number of challenges that will find their way to the national platforms which will be set up as a consequence of the Council of Europe Convention. First of all, at present the Commission states that there is insufficient coordination within and between the Member States, and mentions expressly the operators of games of chances, the regulators of these games, sports organisations and federations, as well as police and judicial authorities. In other words, the Commission has already drawn up a wish list of those institutions that ought to be involved in the national platforms. Second, the forthcoming recommendations of the Commission will also wish to organize the fashion in which information is gathered with regard to match-fixing, including the reporting on suspicious activities and potential follow-up by sports organisations, regulators and judicial authorities. Third and finally, this recommendation will propose a minimum set of

rules concerning conflicts of interests of stakeholders in the sports sector and operators of games of chance.

In both the Commission and Council of Europe instruments, a major absence is a set of principles as to how the monitoring, detection and prevention of match-fixing should actually be implemented. Proactive monitoring and detection is a crucial element in a strong anti-match-fixing policy. This is currently done at a limited level by a few organisations like FIFA (EWS), EL (ELMS), and soon also the IOC (Integrity Betting Intelligence System – IBIS).

However, there is a need to do more. In order to ensure the integrity of sport, and protect public order against organized crime and money laundering, a high level system in the monitoring and detection of sports manipulations is required. Such systems must be independent from the sport sector, efficient in their operations, and enable interoperability between various states.

It is important that the information gathered, as well as its analysis, occurs in a fully independent fashion without the organization that detects the manipulations of the sports conventions, and reports it to the national platforms, will have any financial or other interest in the sports event. Potential conflicts of interest must be avoided.

Rules implementing the Convention and the Recommendations will have to make room for the human element, but will also need to make effective use of strong technology in detection of manipulation. Both the expert investigators in police and judicial investigations and performant data-mining and IT systems will be essential. In this fashion, many thousands of sports competitions across several disciplines can be properly analyzed based upon facts, and suspicious competitions can be signaled to point the expert investigators in the right direction. Such systems already exist, and are already being used by certain sports federations and many gaming operators. They are further elaborated at international scale.

The Convention in the Council of Europe leaves quite a bit of leeway to national authorities to set up their own national platforms as they see fit. The fact that this means that they would also have diverging methods and systems of detection could be highly problematic, since it is exactly the level to which statistics and gathered information can be easily exchanged (e.g. interoperability) that will guarantee the effectiveness of any police and/or judicial cooperation against match-fixing. Therefore, it is crucial that certain minimum standards are agreed between the Parties to the Council of Europe Convention with regard to the services that will enable them to communicate with each other without delay.

Transnational collaboration at global level is necessary so as to protect the integrity of sports. The Convention of the Council of Europe is an important first step, but it remains a framework that needs fleshing out. One should probably look further to the recommendation of the European Commission, the (Member) states and the work done by various other stakeholders (as FIFA, IOC, EL/WLA) and their suppliers that will substantively shape its innovations, and notably the national platforms. As said, the Recommendations can be expected by the third quarter of 2014, and the Convention will be open for signature throughout 2015. In order to guarantee their success, it is crucial that they are implemented further and in detail by all involved stakeholders. ♦

www.Altius.com

Philippe.Vlaeminck@altius.com

Bart.VanVooren@altius.com