

Protecting the Integrity of Sport Competition

The Last Bet for Modern Sport

An executive summary of the Sorbonne-ICSS Integrity Report
Sport Integrity Research Programme, 2012-14



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Authors: University Paris 1 Panthéon-Sorbonne and the International Centre for Sport Security (ICSS)

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INTRODUCTION

Objectives

The Sorbonne-ICSS report aims to:

- Provide an outline of the research in the field of the manipulation of sports competitions;
- Suggest practical approaches and recommendations.

The main value of this research work is grouping, under a single structure:

- The studies and analyses conducted thus far;
- Innovative functional solutions, bringing the problematic into a larger context than that of the sporting sector, tackling, in particular, ethical and general interest issues.

Multi-disciplinary Approach and Critical Analysis

The framework and environment of the problem of the manipulation of competitions are presented in a comprehensive manner and as completely as possible. Using a critical perspective, the views of different actors has been assessed, analysed and results in:

- A description of the phenomenon of the manipulation of sports competitions;
- An overview of the state of a globalised sports economy, in particular, in the entertainment and professional aspects;
- A presentation of the transnational character of the sports betting market and the risks that it presents for the integrity of sport;
- A typology of cases of competition manipulation and an analysis of the difficulty for state authorities and sports institutions to tackle them;
- An analysis of the economic rationale for persons

involved in the manipulation of sports competitions;

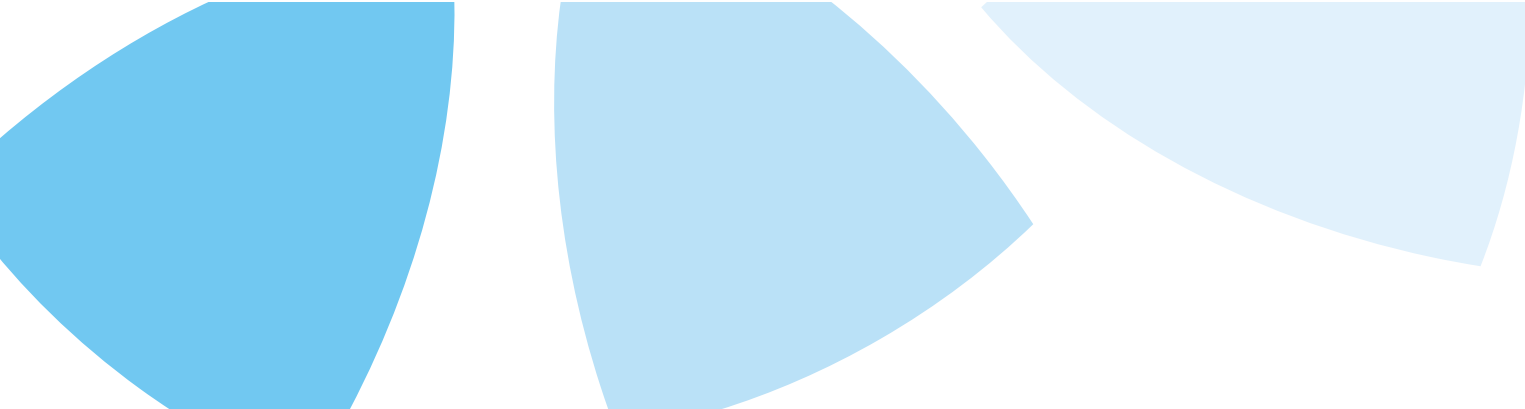
- A plurality of approaches (historical, philosophical, sociological and semiological) to ethical challenges in sports;
- A response to existing policies on the subject of the fight against the manipulation of sports competitions and against illegal betting;
- A study of the constraints affecting public authorities and the sports movement associated with the fight against the manipulation of sports competitions.

Practical Approaches and Operational Recommendations

The ultimate goal of this research project is to shed some light for the decision makers concerned in order to:

- Implement effective prevention mechanisms for the manipulation of sports competitions and illegal bets;
- Design repressive instruments adapted to the issue of manipulation of sports competitions and illegal bets;
- Organise appropriate cooperation and coordination mechanisms between the public and private entities concerned, on the national, transnational and international levels.

This document neither purports to provide an accurate reflection of the logical sequence of the Report nor to give each of its sections due proportion. Its goal is to bring to light some salient elements by answering questions.



1.

WHAT IS THE SIZE OF THE PROBLEM
OF THE MANIPULATION OF SPORTS
COMPETITIONS?





1. WHAT IS THE SIZE OF THE PROBLEM OF THE MANIPULATION OF SPORTS COMPETITIONS?

The recurrence of Acts of Manipulation of Sports Competitions: A Worldwide Phenomenon Threatening the Foundations of Modern Sport

The recurrence of scandals taking place in a certain number of competitions provides a preview of the magnitude of the phenomenon affecting and preoccupying public opinion and competent authorities beyond the sporting world.

A global phenomenon

A review of cases of the manipulation of sports competitions leads to the conclusion that these abuses currently concern all States and all regions of the world, blights some sport disciplines in particular and threatens competitions presenting low stakes (in sports, and economically) as well high-stake competitions of an international character. Cases of corruption involve athletes as well as their professional entourage, clubs, referees/judges and sometimes even officials of sports organisations. Regardless of the perspective used to analyse these cases, the manipulation of sports competitions emerges as a global phenomenon.

Football and cricket: the most targeted sports

In the list of the various sports disciplines in connection to which cases of manipulation have been uncovered, football occupies the leading position. Apart from numerous affairs concerning Asia and recurrent problems in Italian championships as well as the famous “Bochum” case,

manipulation scandals have occurred in various countries such as Finland, Australia, El Salvador, China and South Africa in addition to many other countries whose investigations have discovered that hundreds of matches were affected.

Cricket is ranked second in the number of cases of manipulation. Cases were also uncovered in many other sports such as – among other examples – snooker, basketball, volleyball, wrestling, motor racing, boxing, badminton and handball.

The list of the most affected competitions

Cases uncovered to date show that national championships and other competitions are the favoured sports competitions targeted by manipulators. However, continental and international competitions were also affected by manipulation (examples include qualifying matches for UEFA competitions and international cricket games).

Identified cases: the tip of the iceberg

Numerous clues lead one to think that the cases so far identified make up only the tip of the iceberg. The lack of resources in some federations needed for the detection of fraud and weak surveillance of competitions in lower leagues, junior’s competitions and also women’s team sports and local competitions, lead to the conclusion that cases of manipulation could be a lot more numerous than those yet uncovered.

The effectiveness of authorities is not measured by the number of uncovered cases

The number of cases detected within a continent cannot serve as an indicator of the effectiveness of authorities simply because the real number of cases taking place in each territory remains unknown. The fact that no fraud cases were detected in certain States could either mean that the State took effective preventive measures, or that they lack any means of prevention or the means necessary for detection. Certain sports organisations are more inclined than others to provide the necessary efforts to fight against acts of manipulation, which would, in principle, lead them to the detection of more cases. A parallel can be drawn here with doping cases: federations that conduct very few drug tests uncover few cases of doping, which could lead one to think, sometimes erroneously, that these federations are affected by this phenomenon to a lesser extent.

Therefore, the number of cases uncovered constitutes only one amongst many other criteria to be taken into account when considering the prevalence of manipulations in a given sporting discipline.

Persons Involved: Athletes and other Perpetrators

In the vast majority of cases, whether in individual or team sports, manipulations were accomplished or committed by athletes, and, to a lesser extent, by referees. Other participants such as agents, trainers, and officials of clubs and sports organisations are more rarely the cause of such manipulations. In some cases, the responsibility of journalists and members of the entourage of athletes has been questioned.

Investigations often implicate organised criminals and betting unions, who enlist the help of direct participants through corruption. Their goal is to guarantee a given result at the close of a match or the occurrence of particular events in a game, whose influence on the result of the competition could be important or insignificant, but on which bets can be placed.

The Localisation of Cases of Manipulation of Sports Competitions: Europe and Asia Particularly Targeted **Europe: the largest number of cases of manipulation uncovered in the largest number of different sports disciplines**

Europe is the region of the world where most cases of manipulation are found across the largest number of different sports disciplines. In addition to the fact that almost all European countries have been affected by cases of fixed football matches, some of which are among the most notorious, practically all sanctions imposed for manipulating competitions in sports such as snooker and tennis involved European athletes.

Asia: frequently manipulated championships

Asia is the continent with the largest number of manipulated cricket matches and the largest number of players involved. In 2013 alone, investigations regarding numerous games organised in the framework of national tournaments led to the suspension of a significant number of players in India, Pakistan and Bangladesh.

Although the number of manipulations found on the Asian continent concerning football matches remains lower than that found in Europe, it is in Asia that certain championships were found to be almost entirely manipulated. As in Europe, the observations in Asia show that cases that were uncovered or denounced concerned many different sports.

Oceania, Africa and the Americas: currently a less alarming situation

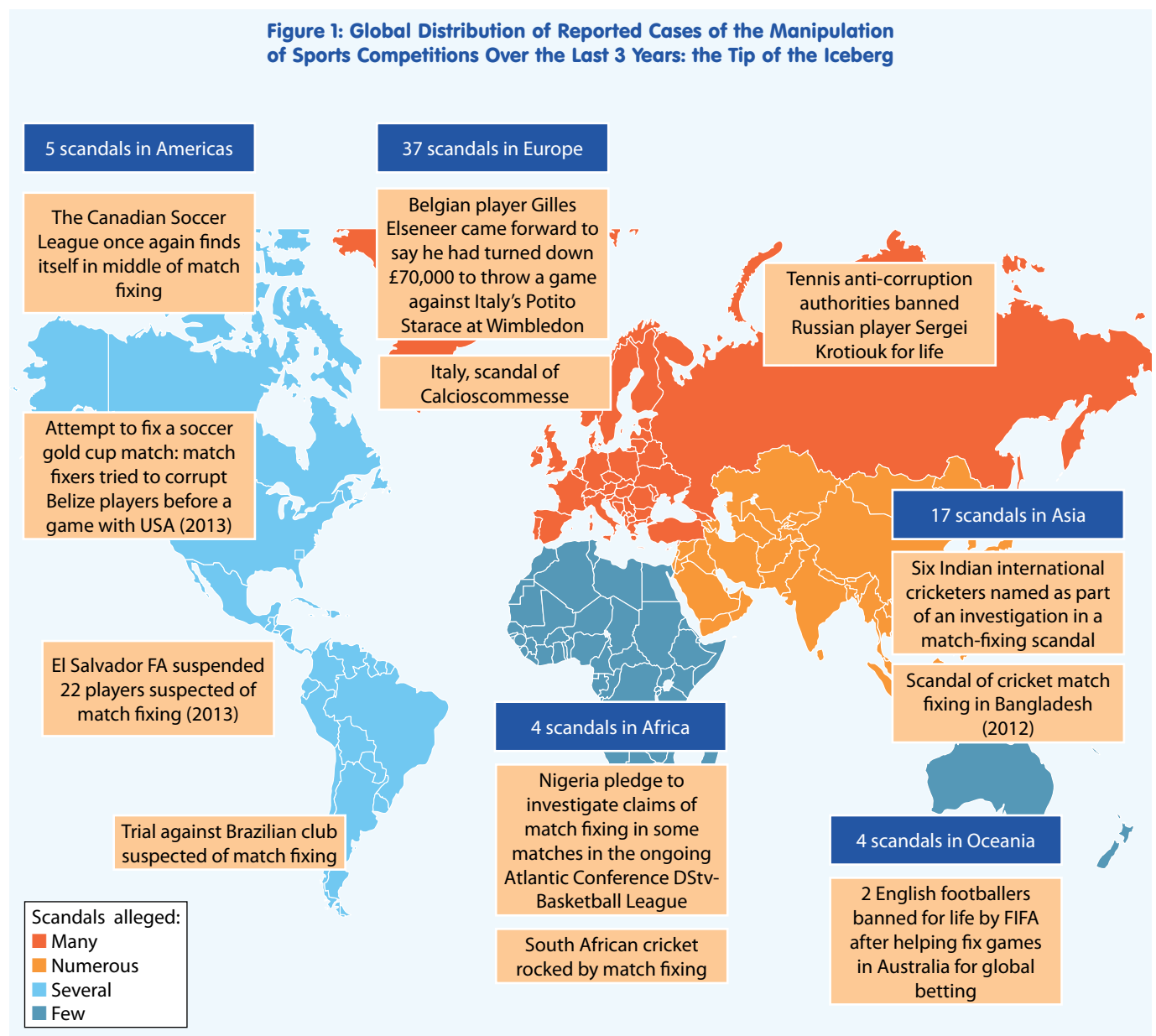
This is in contrast with the situation in Oceania, where manipulations have only been revealed to affect football, cricket and rugby. The situation in Africa remains intermediary, since other than in football, only isolated cases have been uncovered in cricket, boxing and basketball. In the Americas, cases of manipulation were observed, for example, in baseball and basketball (North America), and football (Central and South America).



The map below provides a concise overview of the distribution of reported cases of the manipulation of sports competitions. It is not intended to be exhaustive and the colour codes simply aim to indicate trends.

In reality, the reported cases are likely to be the tip of the iceberg. The actual number of cases of manipulation in 2013 alone is widely suspected to run into the hundreds or even thousands.

Figure 1: Global Distribution of Reported Cases of the Manipulation of Sports Competitions Over the Last 3 Years: the Tip of the Iceberg



2.

WHICH CONTEXTUAL FACTORS
EXPLAIN THE DEVELOPMENT OF THE
MANIPULATION OF SPORTS
COMPETITIONS?





2. WHICH CONTEXTUAL FACTORS EXPLAIN THE DEVELOPMENT OF THE MANIPULATION OF SPORTS COMPETITIONS?

The Increasing Weight of Sport in the Global Economy

Sport, as an economic activity, has taken on global proportions.

The sports market (with the exclusion of the parallel market of illegal sports bets) comprises almost 2% of global Gross Domestic Product (GDP)

In contemporary developed economies, sports markets have considerably gained in importance: their economic weight is considerable in developed countries, smaller in emerging countries, and relatively low in developing countries. The absence of proven and collected data in a pre-established statistical and accounting framework prevents the making of a precise determination. An estimate, based on partial numbers, provides an approximate scale of between €800 and €900 billion in 2011 (excluding the parallel market of illegal sports bets), which makes up between 1.7% and 1.8% of the global GDP, making sports one of the largest sectors, surpassing the textile and steel industries in developed countries. If the weight of illegal sports bets is to be included, the volume would rise by 20% to 50% based on a low estimation, and almost 100% on the basis of the highest estimation.

The Advent of a Global Sports Market

Sporting events and their immediate derivatives: the most globalised component of the sports economy

The most global element of the sports economy relates to sporting events and their immediate derivative products, televised sporting events and sports betting. The annual number of international or global sporting events is increasing exponentially: 20 in 1912, 315 in 1977, 660 in 1987 and 1,000 in 2005.

Globalisation also affects the sports sponsorship market and the market for the distribution of sporting goods.

The globalisation of the labour market of high performance athletes and its management

Globalisation also affects the labour market of high performance athletes (international transfers of players, with a deregulation in Europe which started with the Bosman decision in 1995¹), but also the labour force needed to produce a professional football game which includes players but also the organisation of competitions in a broad sense. A growing part of this labour force is recruited on a global market and the composition of the labour force of large sports clubs is transnational in nature. The financial assets of certain clubs are now held by foreign owners. For example, in the English Premier

1. A reference to the data provided by FIFA in September 2013, concerning the 2013 winter and summer "mercatos", identifies 10,454 transfers for payoffs amounting to 2.55 billion Euros, 2 billion of which come from the five largest championships. See: http://ec.europa.eu/sport/library/documents/study-transfers-exec-summary_en.pdf.

Football League, thirteen clubs out of twenty belong to foreign owners.

The globalisation of the financing of large sports clubs

The financing of the large European football clubs is also becoming globalised. In the model prevailing in European professional sports until the 1990s, club finances were mainly derived from local or national sources: ticket office gains, public subsidies, private donations, member contributions and sponsors. During this period, revenue obtained from television broadcasting rights constituted a minimal part of the financing (0% in 1971 and 1% in 1981 for first division French football teams). Another model appeared towards the end of the 1990s, first in European football, where it is currently characteristic of the largest clubs, spreading to other sports which have become professionalised (cricket, basketball, rugby, handball). In this model, financing comes from media, in particular through broadcasting rights, followed by super-rich owners, who invest in football clubs and often appoint professional managers to run these clubs.² Clubs have developed merchandising operations, which represented up to 34% of Manchester United's revenues in 1998. Lastly, some clubs specialise in the training of young players earning value from the transfer of these players on the global market. Other clubs rely on the capital market by reorganising as joint stock companies and introducing their shares into the market. The current financing model is becoming more and more globalised. There is no longer an automatic or necessary link between the nationality of a large football club, that of television channels that broadcast its matches, that of the owner interested in investing in the club, that of the bank granting it credit or the players on the field.

The subjection to European Union law

Logically, the advent of sports as a global economic activity exposes it to the application of European Union law. The Court of Justice of the European Union obviously intending

to subject sport to the application of norms relating to free movement or competition applies the following triple test: do the contested measures pursue a legitimate objective? Are the restrictions inherent to the contested rules? Are they, lastly, proportionate to the objective pursued?

The uncertainty of results threatened by the economic globalisation of sports

The phenomenon of globalisation in the sports economy as well as the financial stakes that stem from it, both individually and collectively, produce a double effect: although they feed temptations to manipulate sports competitions, they constitute, at the same time, a very strong incentive to maintain the uncertainty of results in sports. This element of uncertainty represents the whole point of competitions and justifies the invested sums, in particular in the training of athletes, buying clubs, organising competitions, negotiating broadcasting rights, sponsorship contracts, etc. In this respect, private investors as well as States, who inject public subsidies, have a common interest.

The Parallel Development of a Transnational Market of Sports Bets of an Estimated Amount Between €200 and €500 Billion (Amounts Bet)³

Since the 2000s, the sports betting market has reached global proportions epitomising – along with financial markets – a totally globalised market. A bettor in one country can access an online betting platform located in another country to bet on the results of sporting events taking place in a third country in real time. For example, a Japan-based bettor can bet through a sports betting website based in Malta (which is considered illegal in Japan), on the number of corners in a Brazilian championship football match.

This sports betting market is grafted onto sporting competitions of all levels, in all disciplines, from the most prestigious – such as the Olympic Games – to the most modest, and from those presenting high sporting stakes to those lacking such stakes.

2. For instance, a CSA report entitled "Sports and Television" from June 2011 indicates that television broadcasting rights represented 40% of the budgets of professional English clubs and 57% for professional French clubs. See also, for raw numbers, the study prepared by Grant Thornton in March 2012 entitled "Focus on Football Finance" [http://www.grant-thornton.co.uk/Documents/Focus_on_football_finance.pdf] and for the shares of the various resources for 2011/2012 of the English Premier League (revenue mix), the study prepared by Deloitte entitled "Turn on, Tune in, Turnover. Annual Review of Football Finance – Highlights – Sport Business Group – June 2013" [<http://www.deloitte.com/assets/Dcom-UnitedKingdom/Local%20Assets/Documents/Industries/Sports%20Business%20Group/deloitte-uk-sbg-arff-2013-highlights-download.pdf>]. Page 7 of this study provides the following percentages: 50% TV rights, 23% "match day", 27% commercial.

3. Certain experts (see in particular Interpol) provide an estimate between €500 and €1,000 billion.



This hyper-globalisation underlies most of the problems discussed in the Report. It is, in fact, accompanied by a lack of regulation, control and coordination between States. The offer in sports bets constitutes *prima facie* a provision of services that is governed by the law that is usually applicable, whether the law of the State, European Union law, or the law of the World Trade Organisation. However, in itself, it affects very disparate national conceptions of public policy: not all States consider today that the offer of sports bets is legitimate and legal. Those who accept sports bets while making efforts to regulate them confront the ubiquity of operators and consumers of sports bets. In the end, all States help the development of a transnational market of bets which is based on sports competitions taking place within their territory or without, and that attracts, legally or illegally, consumers located within their jurisdiction.

Organisers of sports competitions only have a limited grasp, or even non-existent understanding of the use of these events as a basis for sporting bets.

The Abuses Associated with the Globalisation of Sports and Sports Bets

The phenomenon of globalisation is exploited by those who contribute to the worst forms of financial and other kinds of abuses in sports. Fixed matches seem to evolve at the same rate as illegal international sports bets do. Through international capital flows transiting or investing in sports and sports bets, owners of money obtained in questionable ways use the globalisation of the financial conduits to give this money an appearance of legality.⁴ The risks of using sports as a vehicle for money laundering are multiplying.

4. See 2009 GAFI report on "Money Laundering through the Football Sector."

3.

WHAT IS THE IMPACT OF THE INTERNET ON THE SPORTS BETTING MARKET?





3. WHAT IS THE IMPACT OF THE INTERNET ON THE SPORTS BETTING MARKET?

An Evolution or a Revolution?

The first “organised” sports bets probably existed in Greek Antiquity. Modern bets made their appearance in the 18th century when Briton Harry Ogden became the first bookmaker known to offer odds betting on horse races. In the mid-1990s, the universe of sports bets was transformed by the appearance of the Internet. Carried by the opportunities offered by this new distribution channel, sports bets are going through an unprecedented expansion wave, thanks to, in particular, the following factors:

The proliferation of new betting operators on the internet, often in tax havens

More than 8,000 operators offer sports bets in the world. Most of these operators – roughly 80% – are established in territories applying a low rate of tax and few inspections (Alderney, Gibraltar, Isle of Man, Malta, the Cagayan province in the Philippines, the Kahnawake territories in Quebec, Antigua and Barbuda, Costa Rica, etc.). Most of these operators offer their bets all over the world, often without obtaining the national authorisations required in the countries of their clients making them illegal operators in these countries. Today, 80% of bets on the global sports betting market are illegal.

The map below, prepared by IRIS,⁵ shows the countries that have become “sports betting havens”.

The emergence of private shareholders

It is difficult, given the lack of transparency of the structures and the establishment of these corporations in countries where surveillance is lax or absent, to gain knowledge of their antecedents and their possible links to illegal activities or criminal groups.

The creation of national betting regulatory authorities whose resources are sometimes insufficient to deal with manipulated competitions and money laundering

Such regulatory authorities have gradually appeared in Italy, France, Denmark, Spain, etc and have had to deal with a large number of parameters linked to the complexity of the market, and, at this time, the analysis of the risks of fixed matches and of money laundering. Actions to combat these risks are often relegated as secondary objectives with the exception of some countries like France and Australia.

The unprecedented change in the offer of sports bets

In the past, sports bets only existed in the pari-mutuel form (except in the United Kingdom, Ireland, Nevada, and some other countries such as South Africa and Sweden). In a 15-year period, this market was transformed almost completely with odds betting now making up close to 90% of the market. Subsequently, the market witnessed the

5. IRIS: Institute of International and Strategic Relations.

Figure 2: Countries that have become 'Sports Betting Havens' in 2013

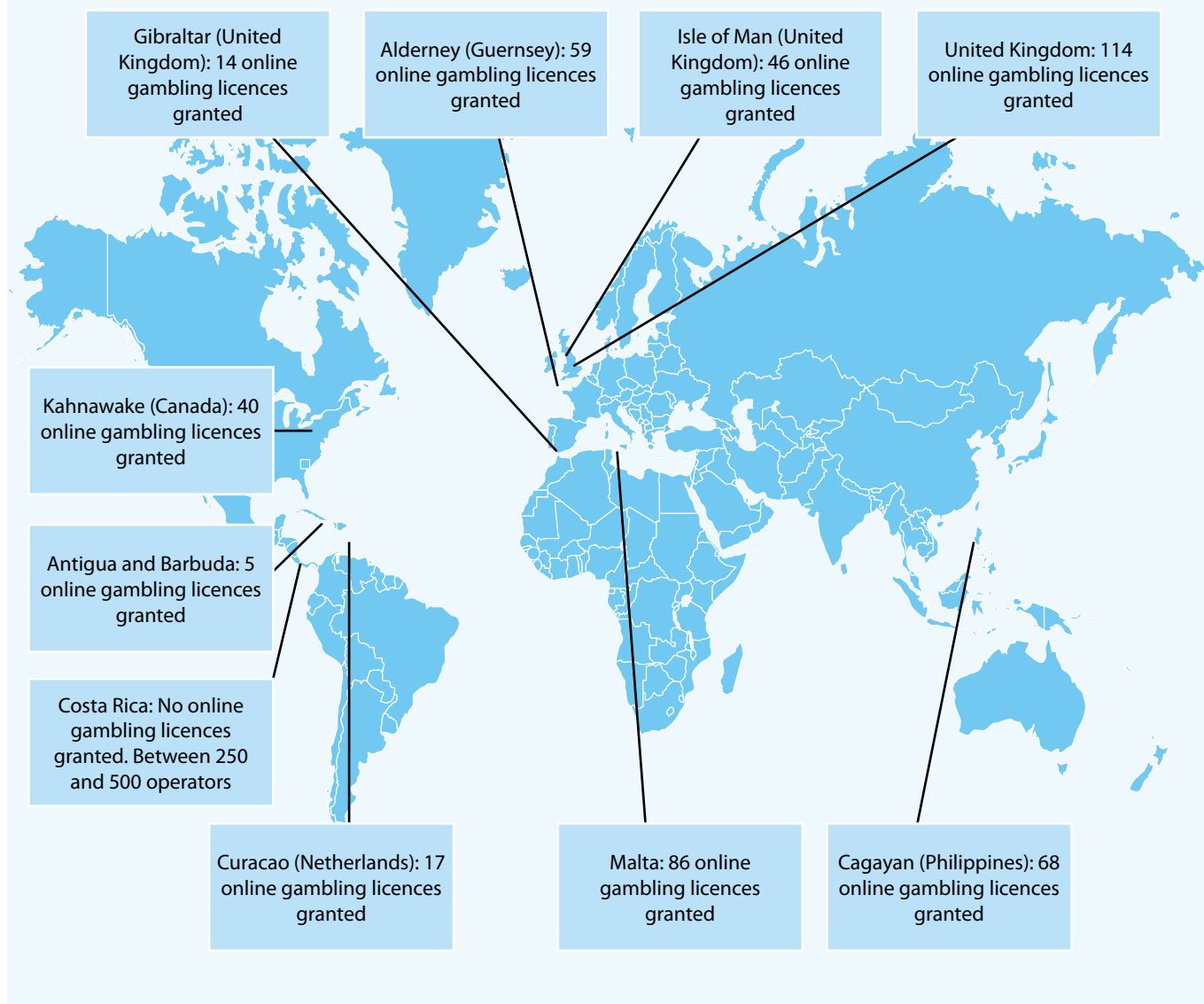


Figure 3: Payout Rates by Operator, 2012

| Operator | William Hill | Ladbrokes | Unibet | Bwin | Sportingbet | Bet365 |
|------------------------|--------------|-----------|--------|--------|-------------|--------|
| Odds 2012 ⁶ | 92.1 % | 93 % | 93 % | 93.1 % | 93.8 % | 95.6 % |

6. Sources: annual reports, except for Bet365 (press release).



progressive emergence of betting exchanges (over-the-counter transactions), the live betting revolution (live bets during a sporting event), the possibility of betting on less publicised events (such as table tennis or badminton) as well as derivative betting formulas (offering the possibility to bet on match facts and not on the result or score of the game).

The considerable increase in return rates for bettors (payout rate)⁷

Twenty years ago, the Italian Totocalcio operator, the worldwide leader in sports bets during the 1980s offered return rates capped at 50%; today, the main online betting operators, in strong competition, offer rates superior to 90% with some reaching 99%.

The emergence of a new type of professional bettors

Some people apply financial techniques to sports bets in order to make gains. “Traders” and also criminals are now part of the picture and use various means to stay under the radar of betting operators and authorities. The famous expression “Know Your Customer” displayed as an absolute guarantee by all betting operators, is not imposed in the sports betting sector with the same rigour as in the financial sector.

The unequal evolution of regulatory models for the sports betting market

When it comes to betting regulations, States have four possibilities:

- Prohibiting certain betting forms;
- Granting a specific exploitation right in the framework of a regulation subjecting operators to certain specifications:
 - ◆ An exclusive right given to one operator (monopoly);
 - ◆ A right given to a limited number of operators (multiple licences);
- Defining a general authorisation regime.

The licencing system, often used in Europe, is not prevalent worldwide, be it for physical networks or internet games.

In fact, prohibition is still used in close to half of the world’s countries. Muslim countries, numerous countries in Asia (including India, Indonesia and Thailand), as well as the USA (except for Nevada) use this system. The main countries with a monopolistic regime are China, Japan, Canada, several Latin American and Scandinavian countries (with the exception of Denmark).

Lastly, the licencing model has been adopted by most large European countries, but also Mexico, Australia and many smaller States wishing to boost the local economy (Central American islands, Malta, the Cagayan province in the Philippines, etc.).

The United Kingdom is the only country using a general authorisation regime.

We can find below a map of regulatory models of sports bets both online and offline in 2012.

The Effects of Public Regulation on the Sports Betting Market

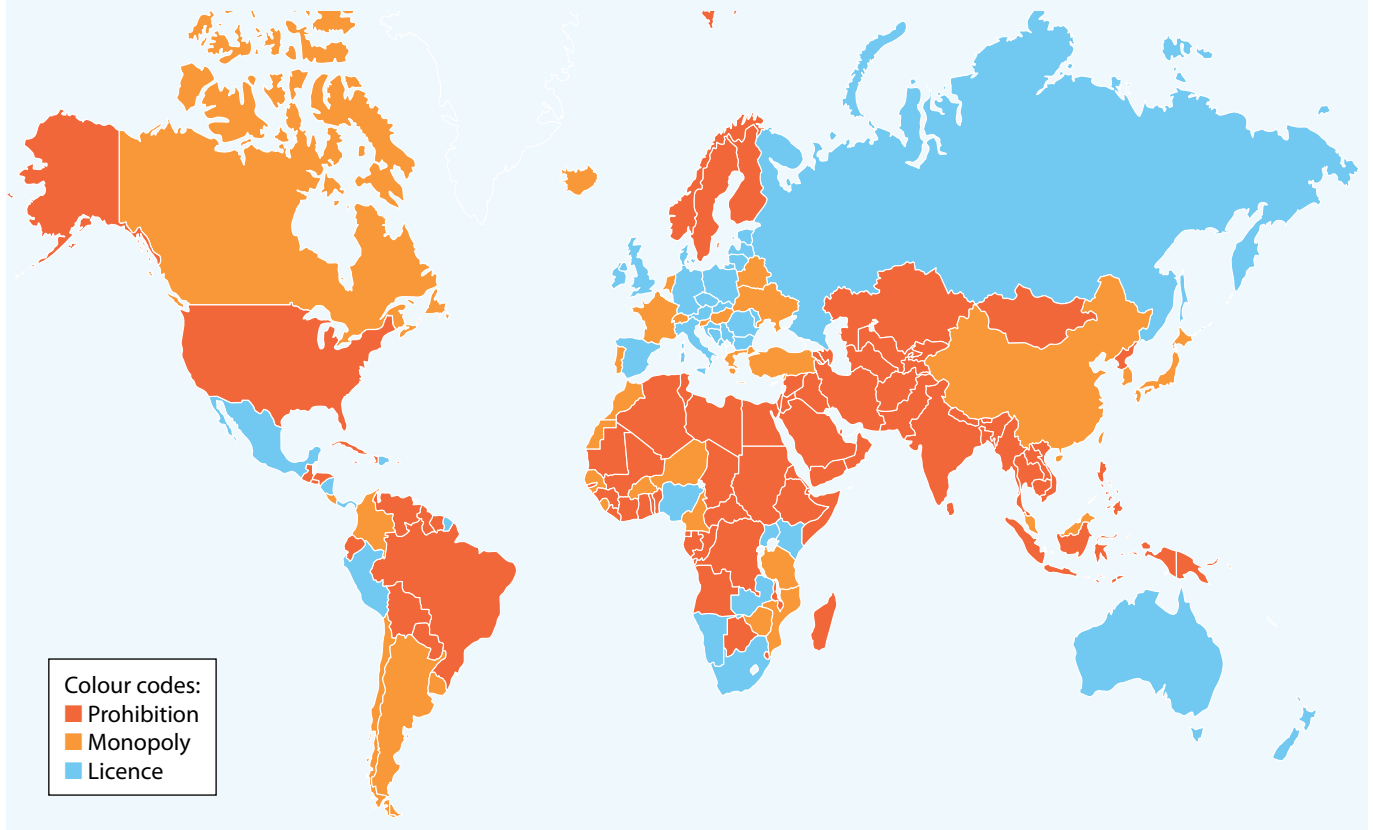
There are three main types of sports betting operators:

- Lotteries (in which sports bets generally constitute a marginal activity, i.e. less than 10% on average);
- “Traditional bookmakers” (which were first developed thanks to horse racing and then, over the last ten years, given the development of slot machines and the internet; sports bets – excluding horse racing– only represent, paradoxically, 10% to 20% of their activity on average and they often act as lenders);
- “Pure players” (these types of betting operators were established some fifteen years ago with the emergence of the internet, and who having started from nothing, are catching up with the two other groups).⁸

7. Payout rate: the proportion of bets returned to bettors for a win.

8. Betting operators who operate only on the Internet.

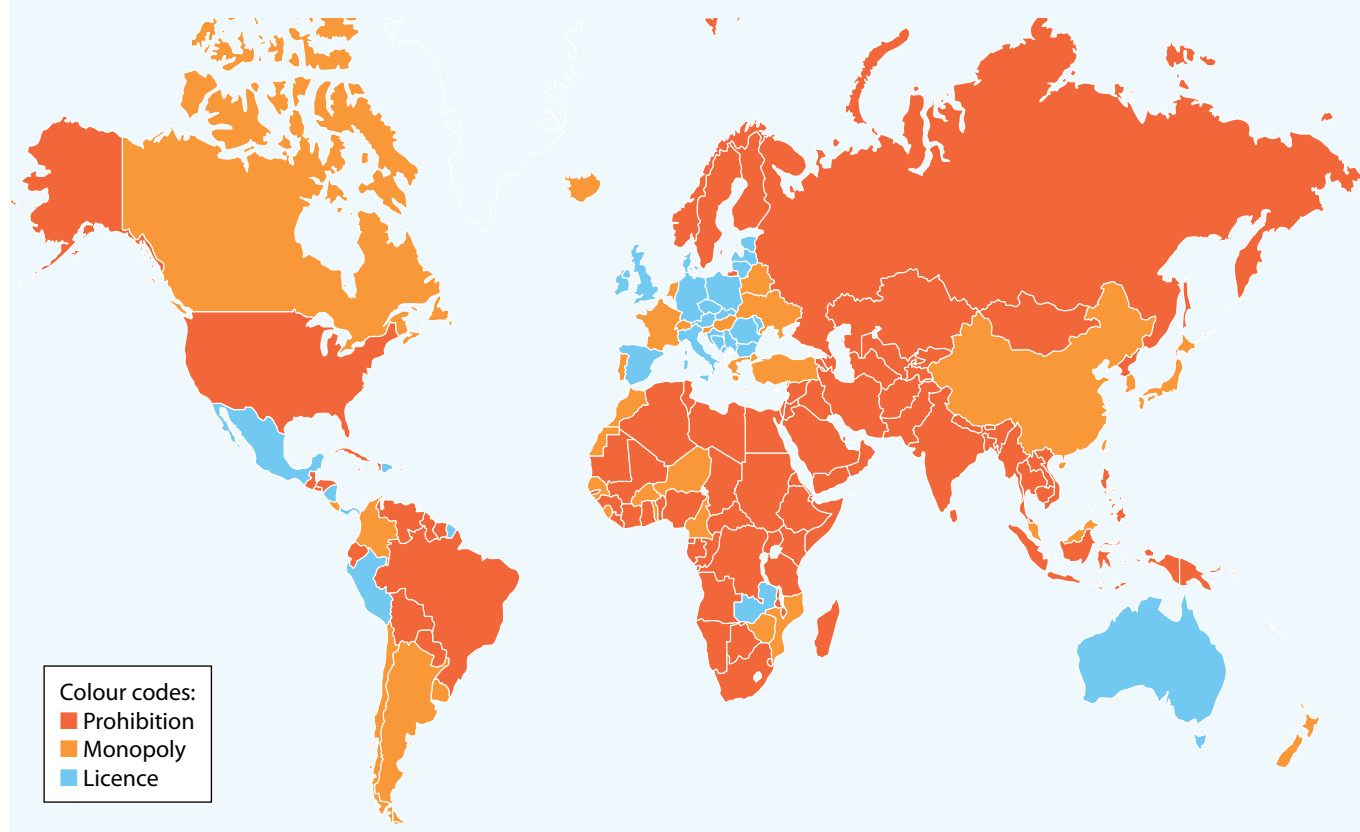
Figure 4: Mapping Models of Regulation for Offline Sports Bets, 2012⁹



9. Colour codes: red: prohibition; orange: monopoly; green: licence.



Figure 5: Mapping Models of Regulation for Online Sports Bets, 2012¹⁰



On the basis of this categorisation, it is possible to compare the main indicators of the most representative operators of these categories:¹¹

- The largest lottery operator in the world (Lottomatica);
- The top traditional bookmaker (William Hill);
- The top internet “pure player” (bwin.party).

The taxation level on sports bets varies greatly between countries depending on the objectives pursued. For example, if the policy objective is to protect civil society against public and social risks, taxes will be significant. Sports bets generate roughly €4 billion of revenue for

States, sports and various general interest causes. Lotteries are heavily taxed on their gross gambling revenue (GGR, i.e. the amount of bets minus the amount paid to winners) and are the largest contributors (75%).

There is no real correlation between the regulatory model, taxation and illegal bets. This means that a country can adopt a very restrictive policy (monopoly, high taxation level) and control the illegal market, provided that it allocates enough resources to the task.

The per capita spending is more closely linked to economic and cultural factors than to the choice of a regulation model or taxation system.

10. Colour codes: red: prohibition; orange: monopoly; green: licence.

11. GGR: Gross Gaming Revenue (difference between the total of bets wagered and the total of winnings paid out to players); NGR: Net Gaming Revenue (difference between the GGR and the taxes levied on games that an operator has to pay in a country); EBITDA: Earnings Before Interest, Taxes, Depreciation and Amortisation (benefits before interest, taxes, depreciation charges and provisions on fixed assets, but after equalisation provisions, stock provisions and client debts).

Figure 6: Lottomatica, William Hill and Bwin.Party: Financial Data (%), 2011

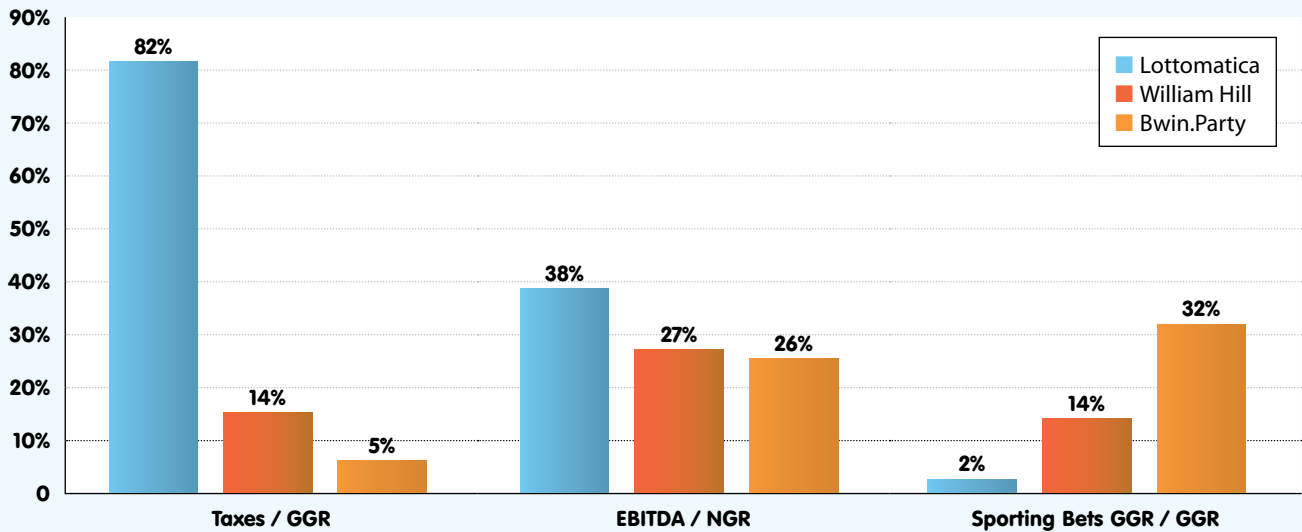


Figure 7: Lottomatica, William Hill and Bwin.Party: Financial Data in € Millions, 2011

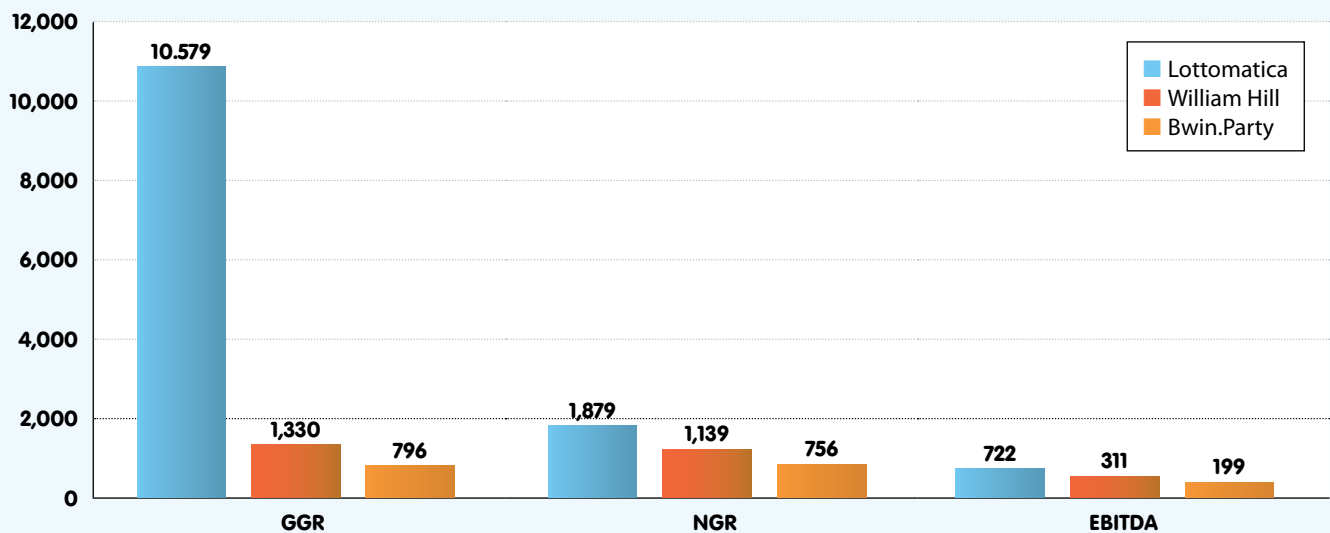




Figure 8: Lottomatica, William Hill and Bwin.Party: Main Data, 2011

| 2011 | Lottomatica (excluding Gtech) | William Hill | Bwin.party |
|---|---|--|--|
| Original Form | Lottery (member of WLA (1) and EL (2)) | Bookmaker (member of ABB (3) and RGA (4)) | Internet gambling operator (member of EGBA (5)) |
| Number of Employees | 8,000 employees (in the whole group) | 15,900 employees (including points of sale) | 2,700 employees |
| Number of Points of Sale | 113,800 | 2,370 | 0 |
| Presence | Italy (100%) | UK (92%), Italy, Spain, USA (Nevada), Australia | Germany (22%), Italy (10%), UK (10%), France (7%), USA (6%), Spain (5%), Greece (4 %), Denmark (2%), other EU (18%), rest of world (17%) |
| Legal Presence (estimation – % of GGR) | 100% | 97% | 45% |
| Turnover | €30,295 m. | €20,950 m. (all products) | €3,760 m. (sports bets) |
| Average GGR | 65% | 93.7% (all products) N.B.: GGR bets in points of sale: 83.2% | 92.3% (sports bets) |
| GGR | €10,579 m. | €1.330 m. | €796 m. (gambling) (+€20 m. other revenues) |
| Taxes Linked to Bets | €8,700 m. | €191 m. | €40m. (estimate) |
| Taxes Linked to Games (% of GGR) | 82.2 % | 14,4 % | 5 % |
| NGR (Net Gambling Revenue) (6) | €1,879 m. | €1,139 m. | €756 m. (+ €20 m. other revenues) |
| Costs of Operation | €1.157 m. | €828 m. | €578 m. |
| EBITDA | €722 m. | €311 m. | €199 m. |
| Internet Part of GGR | 1.2% (estimation) | 28% | 100% |
| Proportion of Sporting Bets in GGR | 1.9% | 14% | 32% |
| Other Activities | Percentage in turnover: slot machines (37%), scratch cards (33%), Lotto (22%), etc. | Slot machines (37%), horse racing bets, online casinos, online poker, etc. | Casinos (33%), Poker (26%), Bingo (8%) |

1 WLA : World Lottery Association

2 EL : The European Lotteries

3 ABB : Association of British Bookmakers

4 RGA : Remote Gambling Association

5 EGBA : European Gambling and Betting Association

6 NGR = GGR – Taxes linked to gambling

Figure 9: GGR, Return Rates and Bets Placed, 2011

| Year 2011 | GGR | Return Rates (delicate estimation for the illegal market) | Bets Placed |
|----------------|---------------------|---|---|
| Legal Market | €10.5 billion (66%) | 78% | € 47.7 billion (15%) |
| Illegal Market | €5.5 billion (34%) | 98% ¹³ | € 275 billion (85%) |
| Market Total | €16 billion (100 %) | 95% | €322.7 billion (100%) (obtained by calculation) |

The Dynamics of the Sports Betting Market

The total GGR of the sports betting market (excluding horse racing, greyhound racing, motor-boats and keirin) can be estimated at €16 billion in 2011: the legal market makes up a little less than two thirds (€10.5 billion), and the illegal market a little more than one third (€5.5 billion) of the market.¹²

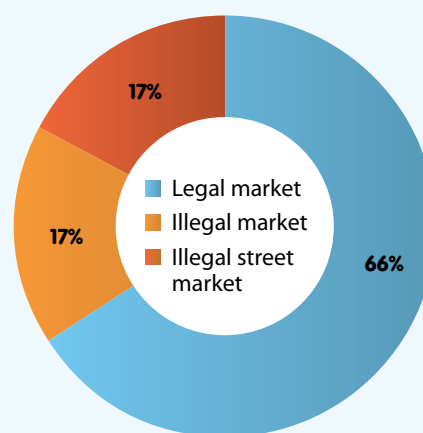
However, if one is to reason in terms of bets (which is very difficult to do since GGRs of illegal bets are not accurately determined), the estimated volume of the global market (legal and illegal) of sporting bets is somewhere between €200 and €500 billion, more than 80% being illegal bets. The difference between GGR and bets comes from return rates to bettors, which are very high in the illegal market (sometimes more than 99%).

If one is to reason in terms of GGR per continent, Asia (including Turkey) has a slightly larger market share than Europe on the sports betting market (legal and illegal), with the two continents sharing close to 85% of the global market.

Specifically, among the ten leading countries of the world, there are five Asian countries and all the large European countries with the exception of Germany.

However, if the study is limited to the legal market, Europe holds a more significant market share than Asia and makes up almost half (49%) of the global GGR. Almost 60% of this legal market is represented by State Lotteries, in both Europe and Asia.

Figure 10: Legal Market, Illegal Market and Street Market, 2011



12. The illegal market includes illegal internet bets and illegal street bets.

13. If the GGR value for the illegal market is substituted by 96%, the illegal market volume (in bets) would be €137,500 billion, and a total market of €185,200 billion, or a little less than half of the number provided in the table above, for a GGR difference of only 2 points. This shows the extreme volatility of the "bets" variable in relation to GGR and the limited interest in reasoning in terms of bets.



Concerning the illegal market, Asia and America (including the USA), have large “street” markets and make up close to three quarters of the global illegal GGR.

Online bets make up 30% of the global market. However, if illegal street bets are excluded, their share would amount to more than 35%.

In Europe and Oceania, the internet share is close to 40% because of the less developed illegal market in comparison with the other continents.

Europe has a larger market share than Asia when it comes to online sports bets, but it should be kept in mind that, in Asia, the only authorised online operators apart from the State monopolies are those holding a licence in the Philippines Cagayan Province.

Today, pool betting only represents 10% of global GGR. In twenty years, this betting form, which was previously

the only form authorised in most countries of the world (with the exception of Anglo-Saxon countries), has become largely irrelevant. Although Asian countries are aided by their high population density and occupy leading positions in the rankings, Latin and Scandinavian countries also present high numbers given their culture and history.

Lastly, the global ranking of operators by GGR values of sports bets (with the exception of horse racing, keirin and speed boat racing) is dominated by lotteries, since seven of those are among the top ten operators. It should be noted that Betfair (€170 billion), SportingBet and Ladbrokes (a little less than €150 billion each) are not found in this ranking. In addition, it was not possible to evaluate, even approximately, the GGR of 12Bet, which seems to be a key player in Asia.

Figure 11: GGR Shares per Continent (Legal + Illegal), 2011

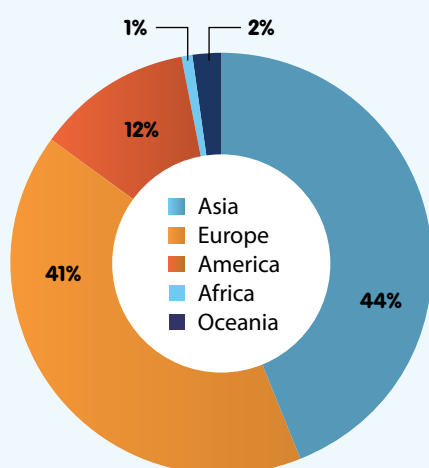


Figure 12: Legal GGR Shares per Continent, 2011

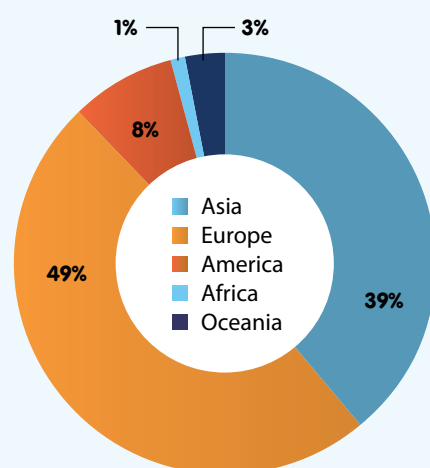


Figure 13: GGR Shares per Country (Legal + Illegal) € Billions, 2011

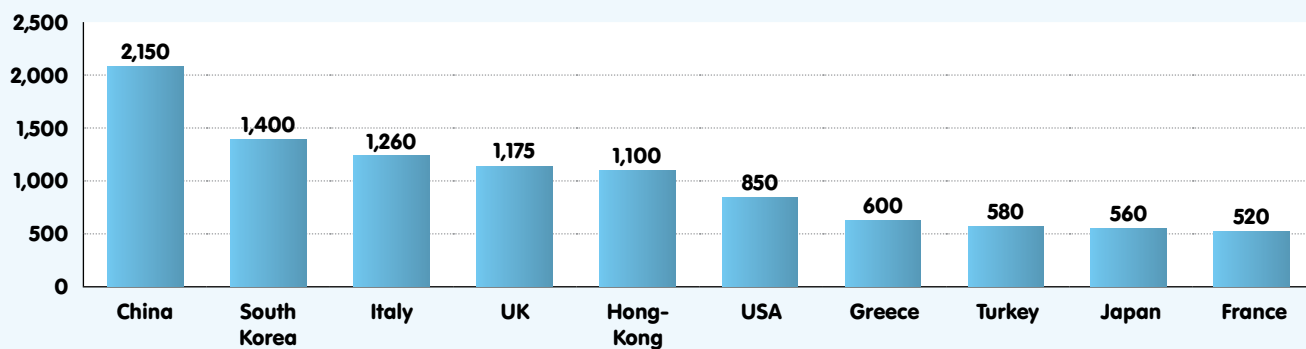


Figure 14: Legal GGR per Country € Billions, 2011

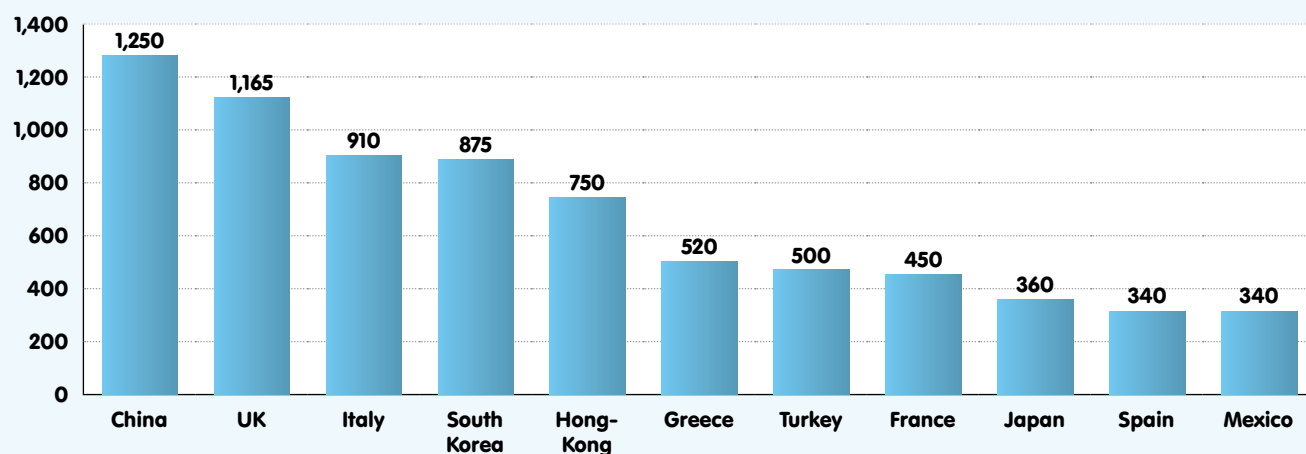




Figure 15: Illegal GGR per Continent, 2011

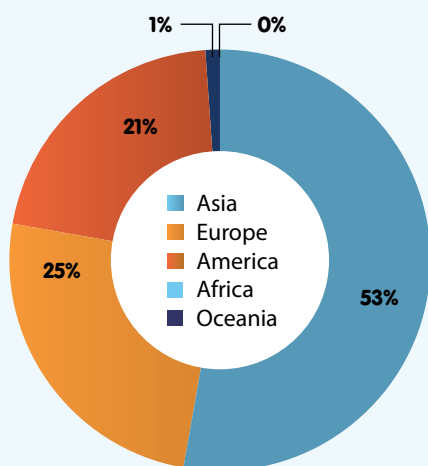


Figure 16: Global GGR (Legal + Illegal), 2011

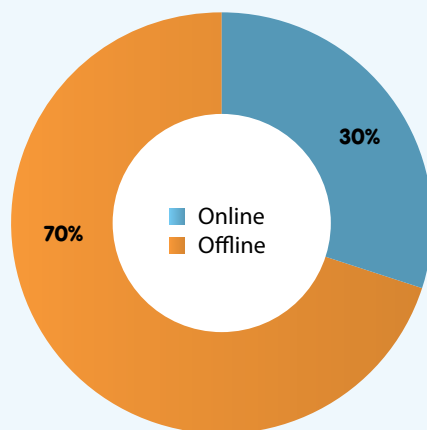


Figure 17: Illegal Online GGR per Country in € Billions, 2011

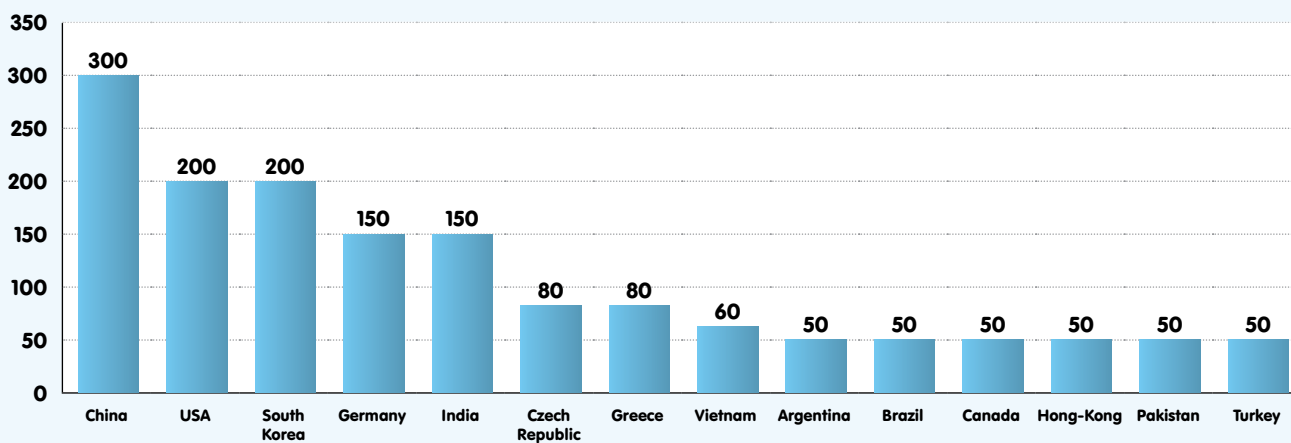


Figure 18: Online GGR Percentage per Continent, 2011

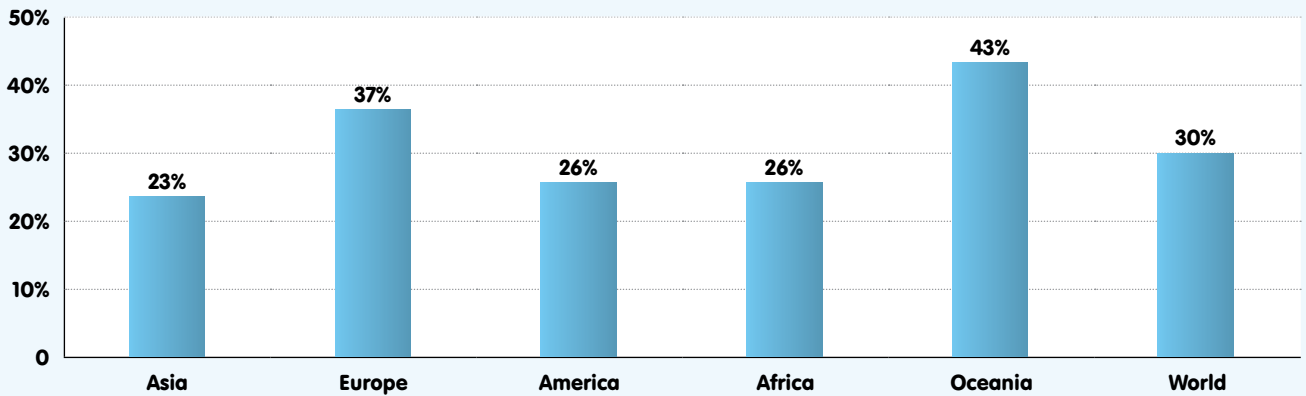


Figure 19: Online GGR per Country in € Billions, 2011 – Global Top 10

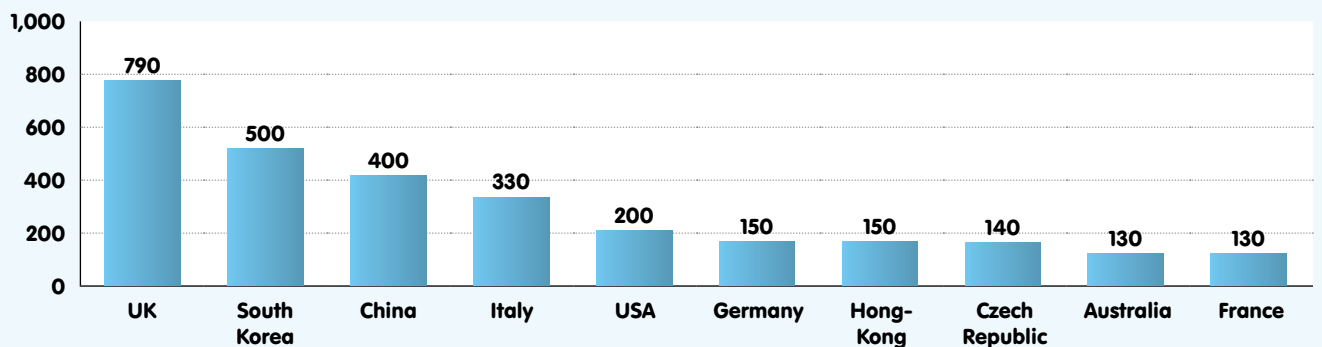




Figure 20: Pool Betting GGR in € Billions, 2011 – Global Top 10

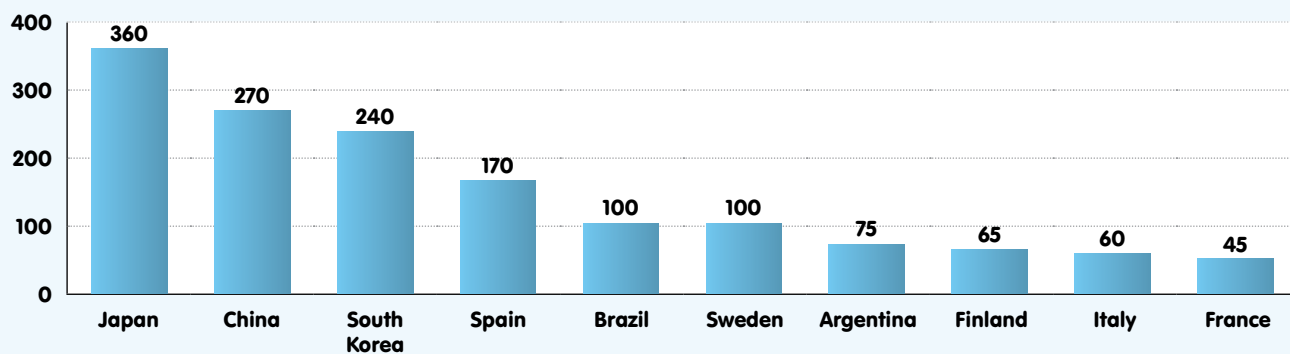
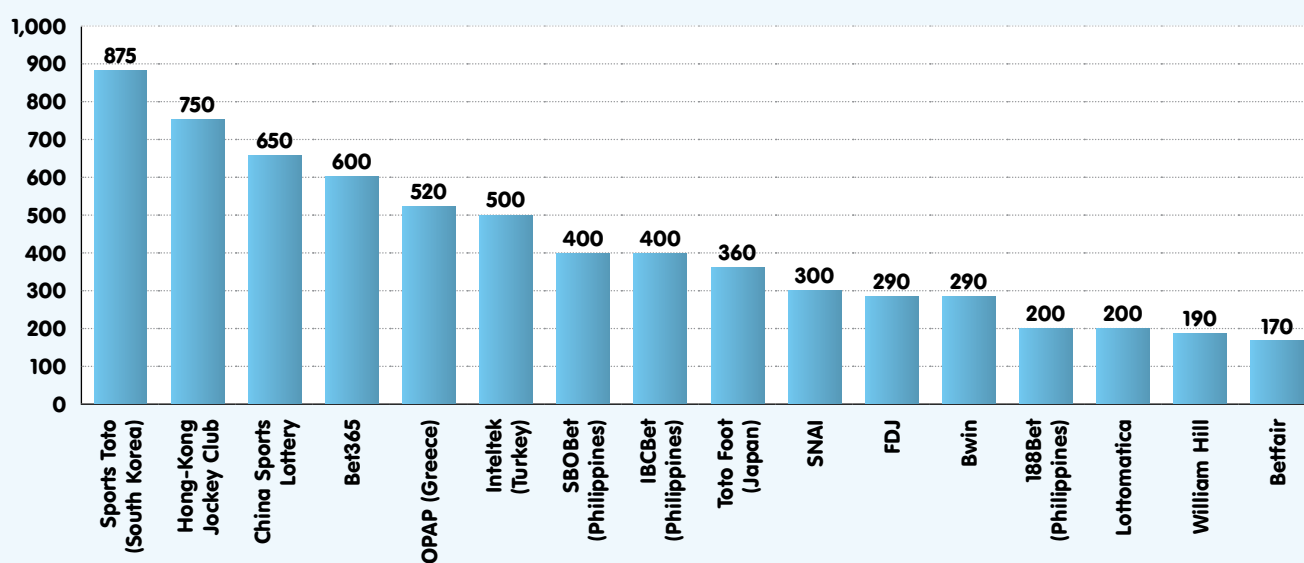


Figure 21: The World's 15 Largest Sports Betting Operators



4.

WHAT ARE THE RISKS TO THE
INTEGRITY OF SPORTS
COMPETITIONS THAT CAN BE
ASSOCIATED WITH THE
DEVELOPMENT OF SPORTS BETS?





4. WHAT ARE THE RISKS TO THE INTEGRITY OF SPORTS COMPETITIONS THAT CAN BE ASSOCIATED WITH THE DEVELOPMENT OF SPORTS BETS?

Illegal Gambling, Tax Havens and High-Frequency Transactions

Today, sports bets pose serious threats to the integrity of sports since their development provides manipulators of sports competitions with numerous opportunities of very lucrative bets that are difficult or impossible to supervise.

Illegal bets

Among the factors to be taken into consideration, it is important to mention the scale of illegal bets which has developed a significant underground economy with links between organised crime and sports as well as the impossibility to detect suspicious odds movements.

The uncontrollable character of bets in Asia provides betting opportunities that are beyond the control of local and foreign authorities.

The co-existence of legal, illegal and partially illegal operators creates a very complex situation for many regulators: it leads partially illegal operators to be wary of measures enacted in favour of sports integrity (they fear measures that could negatively affect their profitability) and creates conflicts of interest (illegal operators financing professional sports to gain legitimacy).

The very strong growth of live betting necessitates, in practice, significant resources to observe the movements of the market and to detect possible manipulation in real time.

The increase in the number of countries seeking to attract betting operators through low taxation regimes and weak regulation also creates a favourable environment for criminals who are attracted to sports betting havens as they are already attracted to tax havens.

Betting formulas attracting criminals

Advances in ICT (Information and Communications Technology), enhanced competition as well as the evolution of betting offers, have created a growing complexity in the types of betting formulas over the last decade. This complexity provides new opportunities for cheats, and challenges for regulators with new risk zones to monitor.

A single sporting event can serve as a basis for several betting formulas. The risk factor of a sporting event increases in proportion with the corresponding liquidity,¹⁴ and this comes from the aggregation of many formulas and types of bets, hence the expression: one event, many formulas, increased liquidity.

Discrepancies in the danger factor (room for

14. Liquidity: total volume of bets on the various formulas linked to a sporting event.

manipulation) between different betting types and formulas warrants an examination of each type or formula, rather than examining “bets” in general. In particular, with regard to the protection of public order and the interests of the parties involved, it would be appropriate to adopt possible restrictions according to the risk factor of each betting type and formula.

The volumes of bets placed on a sporting event is the main factor of attraction for criminals

Betting formulas that are most favoured by bettors, such as the 1x2 (betting on the winner of a match) or handicap bet, where the liquidity level is at its highest, are the most attractive for criminals, who can bet large amounts with limited risks of being detected: the benefits of manipulating these competitions are increased.

Today, live bets make up 70% of the activity of numerous operators and should be paid particular attention. Closely linked to the development of online bets, live betting increases the value of information: with the same privileged information, one can, a priori, make larger profits than in normal bets.

Lacking a sufficient level of liquidity, certain betting formulas (bets on events in the game that do not have a direct influence on the result of a competition – spot fixing) do not present for the time being, any major risks. However, some recent cases (such as that of football in the United Kingdom) have shown that players accepted sums of money in order to get sent off. The risk of individual fraud is more significant than the risk of organised crime, especially since an individual alone can easily manipulate an action during a game. Although these products contributed to the transformation of traditional betting markets, their liquidity levels limit, for the time being, their attractiveness to cheats and therefore limit their danger for sports.

The separation of the sporting result from the betting result represents a major risk factor

Binary betting formulas (handicap, over/under)¹⁵ present a relatively higher risk factor since they allow a dissociation between the sporting result and the betting result. In addition, access to the now globalised market of Asian and American consumers who favour handicap and over/under bets, is certain to increase liquidity to a level that is sufficient to ensure the profitability of criminal operations: the evaluation of the relative risk factors of these betting formulas should take these phenomena into consideration.

The construction of risk management matrixes¹⁶ which allow for the identification of risks that are proper to sports betting types and formulas was undertaken in the framework of this Report. A danger factor¹⁷ for sports can also be established, which allows, in light of decisions made by cheats, to determine the relative risk factors for the various betting products.

The following tables attempt to evaluate the main risks attached to: (1) each betting type and (2) each betting formula.

An average risk is presented on the basis of the following considerations:

- the cost of fraud is linked to the number of participants whose corruption is necessary (5: only one athlete, 1: an organisation);
- the detection difficulty level was determined by a panel of experts (1: easiest to detect, 5: hardest to detect);
- liquidity is measured by the log of transaction volumes/ number of available betting formulas;
- money laundering difficulty is taken from Kalb Verschuuren (2013);
- the likelihood factors are calculated as follows:
 - ◆ probability of individual fraud = 50% (cost of fraud) + 25% (difficulty of detection) + 25% (possibility of laundering);

15. In a handicap bet, one of the two teams or one of the two players starts with a handicap, such a handicap being most often expressed in terms of goals or points depending of the sport. This is the English “spread”. The handicap only affects one team. Generally, any sport in which a match is a priori or becomes unbalanced can form the basis of a handicap market. In any case, this handicap market only has two possible results (and possibly what is called a “push”, meaning a reimbursement).

16. The term risk-management refers to a range of disparate practices that are not necessarily consistently perceived. Although the Francophone community of risk managers is well structured around the Association for Risk Management and Business Insurance (AMRAE) there are no reference texts. In the American context, the term risk-management refers to a range of professional associations who are clearly identified and have very codified practices. In addition, the Sarbanes-Oxley Act imposes obligations since 2002 in the field. Section 404 provides that listed companies must establish an internal control procedure that includes a risk analysis, and in particular the risk of fraud. Most companies have opted for the Internal Control Framework of COSO (Committee of Sponsoring Organisations of the Treadway Commission) which includes an assessment of typical risks for risk-management; and recommendations that have helped to strengthen the requirements for the prevention of fraud. Because of their association status, sports entities are generally exempt from this obligation (although the FIFA report, for example, has several similarities with a report of a listed company).

17. $(\text{Maximum Liquidity}) + (\text{severity}) \times [(\text{Probability of Individual Fraud}) + 2(\text{Probability of Organised Fraud})]/3$.



Figure 22: Main Risks and Sport Danger Index Associated with Betting Types

| (1) Betting Types | Cost of fraud | Detection difficulty | online liquidity ¹⁸ | Live liquidity ¹⁹ | Money-laundering difficulty | Individual fraud likelihood | Organised fraud likelihood | Severity | Sport danger index |
|----------------------|---------------|----------------------|--------------------------------|------------------------------|-----------------------------|-----------------------------|----------------------------|----------|--------------------|
| Parimutuel | 1 | 1 | 1 | 3 | 1 | 1 | 1 | 1 | 1 |
| ex-ante Odds betting | 4 | 4 | 5 | 5 | 3 | 5 | 5 | 4 | 20 |
| Live Odds betting | 5 | 5 | 5 | 2 | 4 | 5 | 5 | 5 | 25 |
| Betting exchanges | 5 | 3 | 5 | 1 | 5 | 5 | 5 | 3 | 15 |
| Spread betting | 2 | 2 | 2 | 1 | 2 | 2 | 2 | 2 | 4 |

- ◆ probability of organised fraud = 12.5% (cost of fraud) + 75% (maximum liquidity) + 12.5% (possibility of laundering);
- lastly, the sport danger index = (maximum liquidity) + (severity) × [(probability of individual fraud) + 2(probability of organised fraud)]/3

While these measures are already applied by some international federations (UEFA in particular), we underline that they can only be used to limit the occurrence of a certain type of manipulation (individual and collusive), which poses a low risk for sports integrity in comparison with manipulations perpetrated by criminal organisations.

The structure of competitions contributes to the existence of windows of opportunity for violating rules by sports participants

A risk of collusive manipulation initiated by (and on behalf of) participants appears when the structure of a competition authorises a net asymmetry of stakes (sporting and/or financial) between competitors. Among the pertinent recommendations set out in contest design²⁴ literature, particular attention should be paid to:

- performance bonuses (game by game) in contrast with a final distribution, to ensure the existence of a financial incentive even if there are no sporting stakes;
- organisation of the order of matches in a championship that gives an advantage to the weakest teams in order to limit the number of low-stake matches as much as possible.

Similarities to financial markets

The financial analogy does not mean that the two industries are the same or linked, but rather that certain instruments of analysis (such as the concepts of insider trading and hedging²⁵) and detection of fraud can be borrowed from financial theory.

Bets and financial products in fact have the same aleatory contract structure, i.e. contracts whose result depends on uncertain events. If one of the parties possesses information regarding the outcome of the contract, it would obviously allow it to take advantage of the other party; and this is why the law prohibits those possessing privileged information from selling or buying a particular financial security.

Similarly, the concept of informational efficiency²⁶ can be used to understand the way in which bookmakers determine their odds by using rules of calculation of probabilities.

18. Source: European Lotteries (not necessarily representative of the aggregated global liquidity level).

19. Ibid, European Lotteries.

20. Ibid, European Lotteries.

21. Ibid, European Lotteries.

22. Bets with a strong correlation to the result of the game (example: half-time winners, margin of victory of the favourite, etc.).

23. Bets with a low level of correlation to the result of the game (example: 1st corner, number of yellow cards, etc.).

24. Collusive fraud risk associated with structure of the competition (mainly the dichotomy between open and closed leagues).

25. Covering risks.

26. The basic intuition of efficient markets is that operators take positions on the market on the basis of information they possess and their own situation. This information is presumed to be common to all agents and free. The market price aggregates the behaviours of individuals and reflects, at all times, all the information available: this is the definition of an informationally efficient market. Therefore, the price observed on the market is equal to the fundamental value, defined as the updated sum of rationally anticipated future dividends.

Figure 23: Main Risks and Sport Danger Index Associated with Betting Formulas

| (1) Betting Types | Cost of fraud | Detection difficulty | online liquidity ²⁰ | Live liquidity ²¹ | Money-laundering difficulty | Individual fraud likelihood | Organised fraud likelihood | Severity | Sport danger index |
|--------------------------------------|---------------|----------------------|--------------------------------|------------------------------|-----------------------------|-----------------------------|----------------------------|----------|--------------------|
| (1-X-2) | 2 | 2 | 4 | 5 | 3 | 2 | 4 | 5 | 17 |
| Handicap Match (1-2) | 3 | 3 | 3 | 3 | 2 | 3 | 5 | 5 | 20 |
| Derivated bets (exact) ²² | 4 | 3 | 2 | 2 | 2 | 3 | 2 | 2 | 5 |
| Derivated bets (over/under) | 4 | 4 | 3 | 2 | 2 | 3 | 3 | 3 | 9 |
| Proposition bets ²³ | 5 | 4 | 1 | 1 | 1 | 5 | 2 | 1 | 3 |

In practice, the methods of market finance already apply to sports bets: algorithms for the real-time detection of sports manipulations are similar to those used by market authorities to detect insider trading whereas bookmakers can hedge their exposure by betting on the sports market themselves, in the same way that financial operators do. However, the methods used by betting operators are currently less sophisticated than those used by banks, and the detection of fraud is made more difficult by the absence of volume data with betting operators not always communicating data about their own volumes.

The difficulties observed to date, in the financial markets subject to transparency duties lead, in contrast, to concern about the lack of transparency of the sports betting markets and its possible consequences: an unexpected crash of betting operators does not seem to be totally unlikely.

Money laundering opportunities

In addition, modern sports bets offer numerous opportunities for money laundering. Being established mostly in tax havens, which have also become gambling havens, sports betting businesses regularly offer their services via the internet without possessing the required

authorisations in the country of residence of consumers. Since illegal betting does not generally constitute a criminal offence, dirty money can easily be transferred, as winnings, from an offshore player's account to a banking account in a reputable country.

Online operators hold the largest part of the risk, because of the high rate of return to players, new methods of payment encouraging anonymity, the lack of verification of the identity of bettors or the illegal offers proposed everywhere.

It is estimated that roughly \$US140 billion. is laundered every year through sports bets, which means that more than 10% of the worldwide revenue of organised crime would gain the appearance of legality in this way.

The combined effects of the globalisation of sports markets (and their international dissemination in particular through the Internet) and betting markets clearly contributed to the increase in opportunities for the manipulation of sports competitions by criminal organisations.



5.

WHERE DOES THE FIGHT AGAINST
ILLEGAL BETS CURRENTLY STAND?





5. WHERE DOES THE FIGHT AGAINST ILLEGAL BETS CURRENTLY STAND?

Combating illegal bets constitutes a public policy issue for the international community as well as governments, and an issue of image and finance for the sports movement.

Mobilisation and Results: an Undeniable Correlation

Regardless of the regulation model and tax level chosen by a country, it is very difficult today to eliminate illegal bets. On a technical level, it is difficult to block all illegal sites, as well as the payments of illegal financial transactions linked to bets. In addition, numerous countries have not yet clearly defined the legal contours of internet screening since the internet is a very young medium. Lastly, combating illegal bets is not generally included in the list of priorities of governments, who primarily target issues such as terrorism.

However, countries that have recognised the scale of danger of illegal bets have obtained significant results although, as is the case in combating doping, the complete eradication of illegal bets does not seem feasible. By contrast, prevention initiatives taken towards bettors, targeting offenders, cooperating with financial institutions as well as targeted police action have brought a noticeable decrease in the amount of illegal bets.

Monitoring the Fluctuation of Odds: an Easily Circumvented Anti-Manipulation Test

Monitoring systems designed to identify the suspect fluctuation of odds (such as the BFDS²⁷ of SportRadar) allow the identification of anomalies and alert public and/or sports authorities to possible manipulations. However, these alert systems have almost never led to convictions; conversely, only a small number of the sports fraud cases resulting in convictions were initiated thanks to such alerts. Contrary to their financial market counterparts, these alert systems do not have access to betting volumes. In these conditions, it seems difficult to go beyond an advanced state of suspicion.

At the same time, odds betting operators are developing their own internal monitoring systems in order to control financial counterparty risk linked to odds betting. These operators possess the advantage of integrating precise information relating to the distribution of volumes transiting through their network, starting with the identity of their clients. Therefore, they are in the best position to judge the integrity of bets placed by their clients on their own platforms.

27. Betting Fraud Detection System.

For a knowledgeable criminal, it is important to avoid inducing significant deviations by making bets that are too large in volume with respect to the liquidity of a given market which could possibly trigger an alert in monitoring systems. However, by avoiding operators known for their advanced detection mechanisms and by carefully spreading their bets between several operators, it is not difficult to circumvent this risk in a betting market lacking transparency and ill prepared to combat this type of manipulation in a coordinated fashion. Real-time monitoring of live bets would require significant resources that are not within the reach of some bookmakers.

In conclusion, dismantling alert systems would certainly lead to an increase in fraud cases; monitoring systems are therefore necessary but not sufficient.



6.

WHAT ARE THE FORMS OF
MANIPULATION OF SPORTS
COMPETITIONS?





6. WHAT ARE THE FORMS OF MANIPULATION OF SPORTS COMPETITIONS?

A Classification of Cases of the Manipulation of Sports Competitions

There are currently very few definitions of the notion of manipulation of a sports competition. The terms “manipulation”, “fixed matches”, “sporting fraud”, “sports corruption” or “arrangement” are often confused.

Gorse and Chadwick seem to be the first to have given, in 2011, a large definition of the notion of manipulation of sports competitions²⁸, followed by the Australian Sports Ministry, which gave another definition.²⁹

More recently, in January 2014, the Enlarged Partial Agreement on Sport (EPAS, Council of Europe) also attempted to define the manipulation of sports competitions and suggested a definition that seems to be satisfactory to public authorities, the sporting movement as well as betting operators.³⁰

Manipulation with or without links to sports bets

Effectively, a distinction should be made between manipulations unrelated to sports bets and those linked to sports bets.

(1) The concept of “consideration” is used here in its broad sense and not in its strict legal sense. Consideration includes a financial remuneration, a benefit in-kind (such as a gift), or a promise (for example, a future contract in a top-tier team, the prospect of a higher salary, etc.). Consideration could therefore be related to sports but it can also be of a financial

nature. In addition, “consideration” offered to oneself can also be taken into account. In such a case, the reward would be a personal satisfaction achieved by the perpetrator through the manipulation.

Quadrant 1. This is the case of an agreement concluded between two teams. In order for this example to fulfil the criteria of the category of manipulations considered, it should be assumed that the two teams, before or during the match, effectively reached an agreement (a “non-aggression pact”) in order to obtain a “win-win” result, to the detriment of a third party, in this case Algeria, during the match of “shame” (1982), and the two teams should be considered as the one and only perpetrator of the offence. Another controversial example which can be placed in this category happened during London’s 2012 Olympic Games, when four badminton women’s doubles pairs were suspected of throwing a match in order to make their progression in the tournament easier.

In addition, a sports participant can be guided by purely personal reasons that lead him/her to risk being discovered and punished. For example, a referee seeking revenge, or out of pure chauvinism, could make unjustifiable decisions regarding the behaviour of athletes complying with the rules of the game.

Quadrant 2. The benefit sought by the sporting participant can be of a financial nature. This is the case when the manipulation is linked to sports bets made by the participant.

28. “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.”

29. “Match-fixing involves the manipulation of an outcome or contingency by competitors, teams, sports agents, support staff, referees and officials and venue staff.”

30. The manipulation of sports competition involves “an arrangement, act or intentional omission aiming to improperly change the result or the progress of a sports competition in order to totally or partially remove the unpredictability of that competition for the unwarranted personal material gain of oneself or others.”

Figure 24: Typology of Sports Manipulations

| | Manipulations without offering consideration to a participant in the competition (1) | Manipulation with the offer of consideration to a participant in the competition (2) |
|--|--|---|
| Manipulations unrelated to sports bets | <p>Sports arrangement (Match of “shame”)</p> <p>Example: Germany/Austria/football/World Cup 1982</p> <p>Quadrant 1</p> | <p>Corruption by bribes</p> <p>Example: France/Marseille/Valenciennes/football/1993</p> <p>Quadrant 3</p> |
| Manipulations linked to sports bets | <p>Agreement regarding the score at half-time</p> <p>Example: France/Cesson-Montpellier/handball/2012 (case under investigation - mere suspicions for the time being)</p> <p>Quadrant 2</p> | <p>Organised crime and manipulation of matches</p> <p>Example: Italy/Calcioscommesse/football/since 2009</p> <p>Quadrant 4</p> |

(2)The concept of consideration is used here in its strict legal sense (quadrants 3 and 4).

Risks for the integrity of sport linked to sports bets

It is also possible to make a list of the main risks linked to sports bets for the integrity of sports.

Modes of prevention adapted to types of manipulation of sports competitions

Each type of manipulation can be associated with one or more prevention methods.

In each of these categories, the manipulation can be done with the aim of gaining a direct or indirect advantage for the perpetrator or for someone else, which itself creates an impact on the type of sanction to apply:

- Manipulations unrelated to bets and with no direct advantage gained by the perpetrator or another person (example: an athlete already qualified for the subsequent stage of a competition voluntarily loses an event in order to avoid playing against a strong adversary at the next stage). These cases are clearly linked to a sporting strategy of the participant which may be sanctioned on

ethical or moral grounds. These cases concern, at the most, disciplinary law.

- Manipulations unrelated to bets, but where the perpetrator of the manipulation was offered an advantage (example: an athlete who loses voluntarily in order to “help” his adversary who promised him an advantage): such cases involve active corruption of the perpetrators, and passive corruption for persons accepting such acts or who do not report them. These actions fall under criminal and disciplinary law.
- Manipulations linked to bets, but without the offer of consideration (example: an athlete who loses voluntarily because he bet on his defeat): this is internal fraud, difficult to sanction under criminal law in its current state, and particularly involves disciplinary law.
- Manipulations linked to bets and including an offered consideration (example: athlete losing voluntarily to allow a third party who promised him an advantage to win bets): this type of manipulation represents the main danger to the integrity of sports and falls under both criminal and disciplinary law.



Figure 25: Main Risks Linked to Sports Betting for the Integrity of Sport

| Risks | Consequences for Sports Integrity |
|---|--|
| Very large amounts of illegal bets: more than 80% of bets (several hundreds of billions of Euros) | <ul style="list-style-type: none"> • A significant underground economy • Impossible to detect irregularities linked to illegal bets • Absence of income linked to these illegal bets for States and sports organisations that could be invested in the protection of sports integrity • A market (sports bets) that escapes in part from monitoring by States • Sources of fraud and violations of public policy (transnational organised crime) • Possible links between organised crime and sports |
| Particular cases of risks linked to illegal bets in Asia | <ul style="list-style-type: none"> • Tangible examples demonstrating the preceding affirmations with considerable damage for sport (in particular football and cricket): distrust in sport |
| Interferences between legal and illegal operators | <ul style="list-style-type: none"> • Legal complexity linked to the presence of operators (even listed operators) that are legal in one territory but illegal in another • Interest of partially illegal operators not to promote stricter measures for sports integrity (because they negatively affect their profitability) • Conflicts of interest (these operators sometimes fund professional sports in order to gain in legitimacy) |
| A very strong increase in live betting: more than 60% of the GGR of the main operators. | <ul style="list-style-type: none"> • Practical difficulties to follow the movements of the sports betting market in real time and to detect cases of manipulations of competitions |
| Rate of return to bettors increasing (through live betting in particular) | <ul style="list-style-type: none"> • Additional interest for organised crime (money laundering through bets allowing a return rate of close to 100%) |
| Countries that attract betting operators due to motivating taxation regimes and weak regulations | <ul style="list-style-type: none"> • Sports betting havens have created risks for sport (by attracting organised crime) in the same way that tax havens created risks for the international banking system |

Figure 26: Typology of Sports Manipulations: Criminal Law and Disciplinary Law

| | Manipulation without Consideration Offered to a Sporting Participant by a Third Party | Manipulation with Consideration Offered to a Sporting Participant by a Third Party |
|---------------------------------------|---|--|
| Manipulation Unrelated to Sports Bets | (A) Disciplinary law | (B) Criminal law and disciplinary law |
| Manipulation Involving Sports Bets | (C) Disciplinary law and in some countries criminal law | (D) Criminal law and disciplinary law |

This table, which is not exhaustive, shows the behaviours that can potentially constitute an offence in the event of the manipulation of sports competitions, in particular in relation to bets. Most of these behaviours already constitute offences – or can constitute offences according to international conventions such as the ones concerning corruption – by certain national laws, or by disciplinary codes of certain international sports organisations. The objective of this classification, which is largely based on substantive laws, is to clarify the main elements of certain violations in this field. Among the criteria of classification of the various behaviours are: the *actus reus* (the material or objective element of the violation), identifying the perpetrators of the offence, *mens rea* understood in its broad sense (the subjective or psychological element, in other words, other than the intention to commit the crime, the tangible goal pursued by the perpetrator), and lastly, the possible link between these behaviours and

sports bets.

Lastly, below is a table used during the drafting stage of the Council of Europe draft Convention Against the Manipulation of Sports Competitions. This table also aims to shed light on what can constitute criminal offences.

The report offers a classification of behaviours, including acts and omissions that are harmful or dangerous for the integrity of sports competitions, perpetrated by participants to the competition (athletes, referees, trainers, support staff, club and federation officials, or clubs or associations) or by third parties. This classification takes into consideration the facts of the manipulation “on the ground” (with or without corruption or duress) as well as actions linked to sports bets (unauthorised sports bets, the disclosure of insider information, etc.) or other acts and omissions endangering the integrity of sports competitions (abuse of office committed by persons tasked with the supervision and monitoring of bets, etc.)

Figure 27: Council of Europe Classification of Criminal Offence

| | | TOOL | | | |
|-----------------|--|---|--|--|---------------------------------|
| | | Violence Coercion Threat | Corruption | Free decision (for oneself) Agreement | |
| AIM / INTENTION | Economic benefit for oneself or someone else | General provisions on threat of use or use of violence, blackmail, extortion,... | General provisions on active and passive bribery | Provisions on fraud !!! | Through irregular betting |
| | Glory friendship | | | Disciplinary sanctions only !!! | Otherwise |



7.

WHAT LESSONS CAN BE LEARNED
FROM ANALYSIS OF THE ECONOMIC
RATIONALE OF A COMPETITION'S
PARTICIPANTS?





7. WHAT LESSONS CAN BE LEARNED FROM ANALYSIS OF THE ECONOMIC RATIONALE OF A COMPETITION'S PARTICIPANTS?

Identifying the Actors Involved, their Interests and their Risks (Athletes, Sports Entities, Bettors, Betting Operators and Regulatory Authorities)

It is possible to describe the competitive equilibrium and the optimum for stakeholders of bets

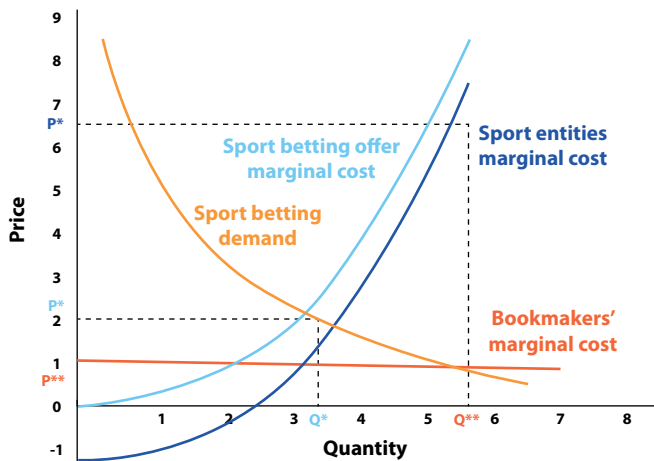
The balance of the sports betting market pits four categories of participants against each other: the authorities whose role depends on the mandate they exercise, the bettors who create the demand, and the offer that results from agreements between the betting operators and the sports entities (occasionally). The former incur significant fixed costs (infrastructure) and as a result increased returns that are manifested through a decreased offer price. Conversely, the offer price of sports entities increases since the abundance of bets attracts fraudsters which brings growing costs.

Figure 28 illustrates two distinct equilibriums: in (P^*, Q^*) , operators take into account the costs that sports entities spend on security; this leads to a high price of bets which leads to a moderate consumption. However, operators can choose not to take into account the constraints of sports entities and cut their prices to improve their position in a very competitive market: this is the case of the (P^{**}, Q^{**}) equilibrium, which is not cooperative.

Potential conflicts of interests between the stakeholders of sports bets: a necessary examination of the validity of the distribution of responsibilities and authority concerning the regulation of the sports betting market

Although the parties have a common interest in sports competitions, the risks to which they are exposed and the benefits they draw can be different. Sports entities only have an interest in the increase of betting volumes if this increase allows them to finance the fight against fraud. The situation of betting operators is of a more complex nature: although odds betting operators can be victims of manipulations, they can cover their risks on betting exchanges. Adequately covered betting operators, similarly to betting exchanges, seem to have an interest in the increase of betting volumes. Their interest will be in opposition to that of sports entities if the latter campaign for a limitation of betting amounts.

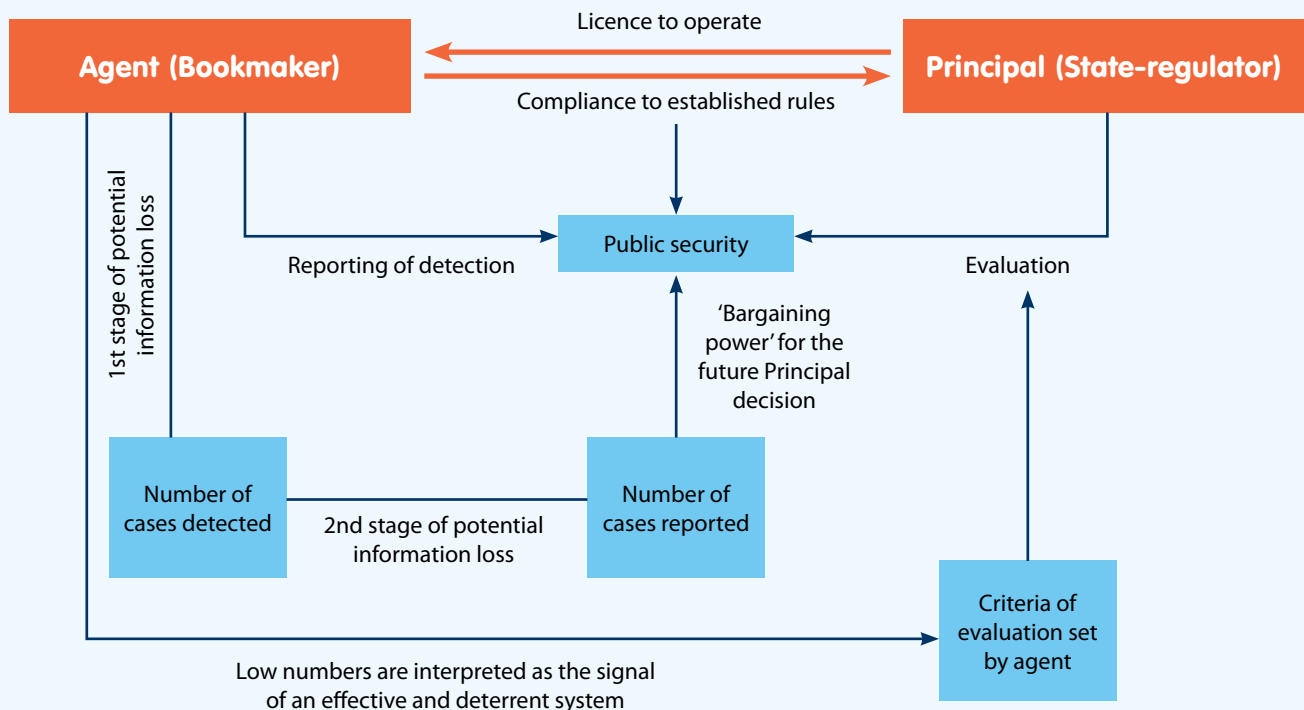
Figure 28: Competitive Equilibrium and Social Optimum



Detection, reporting and the principal-agent relationship; the revelation of fraud, when the social interest collides with the maximisation of the utility of betting operators

In the fight against sports manipulations, the regulating State needs the assistance of the other parties including betting operators who can play an important role in the detection of fraud. However, operators generally have nothing to gain from such cooperation as they have the means to avoid losses in connection with manipulated competitions (hedging). Therefore, the asymmetry of information and interests between the parties who can provide help in combating fraud can be detrimental to the interests of society.

Figure 29: Flow of Information, Interests of the Parties and the Social Interest





The agency theory (agency relationship between a principal who delegates decision-making powers to his agent) can provide mechanisms that encourage parties to cooperate.

The aim is to ensure that, whatever their interests, including non-disclosure of certain information, the betting operator (the agent) would be incentivised to provide the regulator (the principal) information which the latter needs and, thus, reduce the asymmetry between them (namely, regulator under-informed on one hand, and the betting operator as the holder of information, on the other hand).

Such incentives can result, for example, in the creation of a certification scheme (on the basis of other standards for measuring performance), accorded to the operator by the regulator. The operator can therefore acquire (through an audit process, for example) a visible and verifiable characteristic, which would contribute to the revelation of the private information he holds (the non-communication of which is detrimental to the principal).

Another solution is to strive for transformation in the internal organisation of sports entities and betting operators which would lead (according to the model of financial institutions), to a limitation of the conflicts between commercial interests and obligations in terms of risk management and compliance (commonly known as the

“Chinese Wall”). In practice, it means that the departments responsible for internal audits and risk management remain strictly autonomous from other departments and that the results of their work can be transmitted to regulators, while recalling that the principles of compliance and KYC (“Know Your Customer”) are integral parts of the standards that accompany the work of these departments.

Unlike sports betting operators, federations are ill-equipped to effectively combat the manipulation of sports competitions

Betting operators can, to a certain extent, and through costly devices, ensure their own protection (through a well calibrated risk management strategy and through hedging techniques). However, sports federations are exposed to a globalised phenomenon that they are not adequately equipped to control.

Repeated scandals can lead to the collapse of a team or competition

Following repeated scandals, the degradation of a team or a competition’s image can lead to the collapse of its image and economic model, in particular when it can be observed that it is not efficiently combating corruption within its structure. Such results should be avoided.

Identifying the Economic Rationale of Stakeholders

A study of the modus operandi of match-fixing criminals shows that they act according to an undeniable economic rationale.

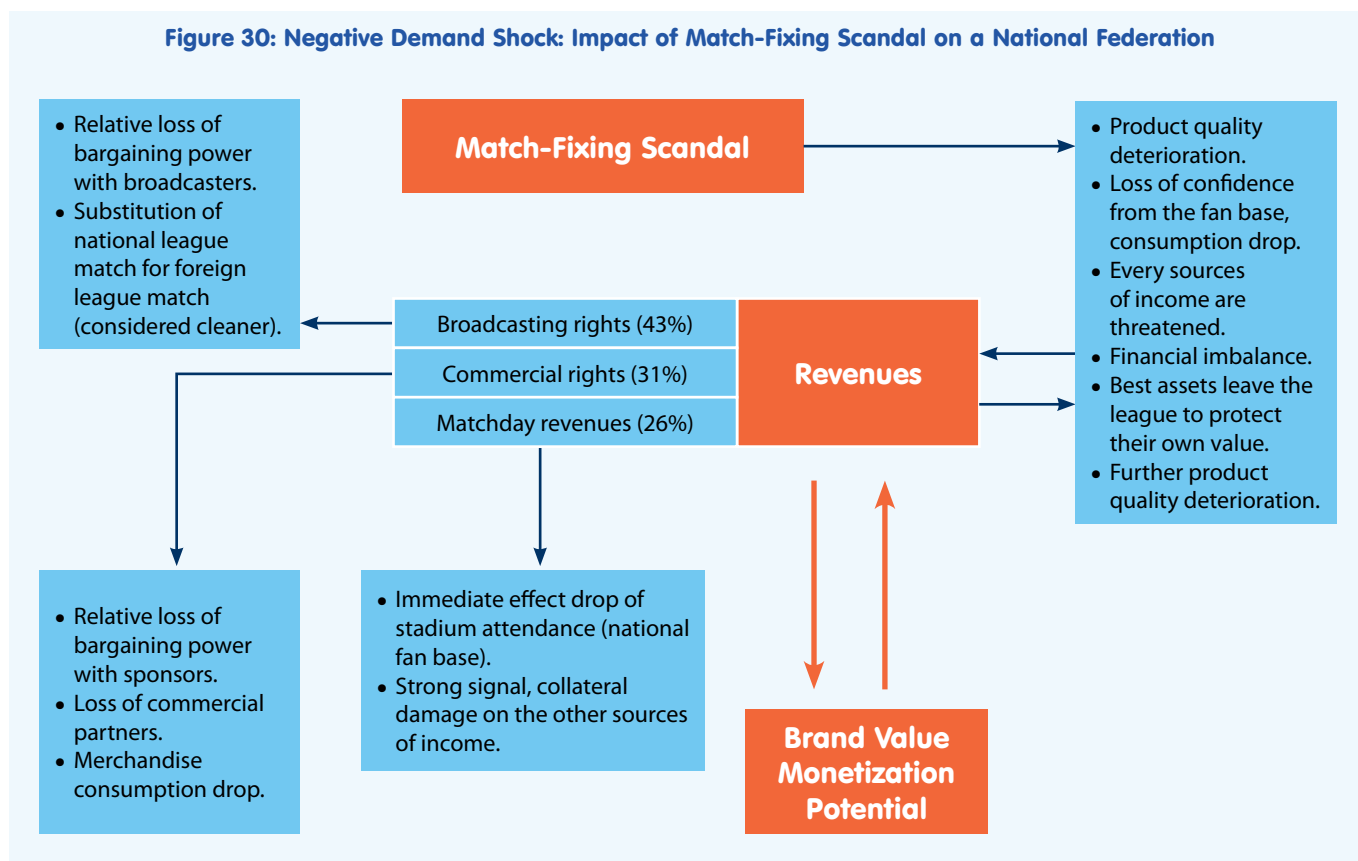
Match-fixers make cost-benefit calculations

Match-fixers choose with care the events they will manipulate after making a cost-benefit calculation where they take into consideration the feasibility of a manipulation, which depends on their pool of corrupt athletes and officials, as well as the liquidity of the betting formulas corresponding to the event.

A viable criminal match-fixing scheme should present

the potential of gains (from non-informed bettors) which is sufficient to cover the costs incurred and generate profits that warrant the risks taken. A clever distribution of fraudulent bets on the sports betting market allows for a maximum exploitation of privileged information (concerning acts of sports manipulation or fixing), i.e. just below the detection threshold of monitoring systems. This type of criminal "project management" involves the mobilisation of multiple resources and skills: this being said, it seems necessary to recognise the shortfalls of watchdogs as well as the need for a coordinated fight, simultaneously tackling the different aspects of the same phenomenon.

Figure 30: Negative Demand Shock: Impact of Match-Fixing Scandal on a National Federation





Fraud, an activity presenting an increasing rate of return

The importance given by the criminal economy to the individual calculation of costs and benefits could lead one to think that fraud in sports corresponds to a craft activity.

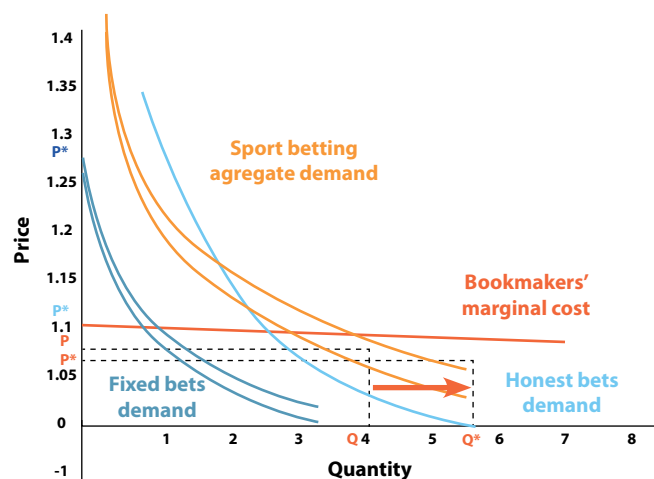
However, details of the implementation of the criminal design show that fraudsters have a network of corrupted athletes and operators who place the bets and claim the winnings: once this network is deployed, a sustained activity is needed in order to amortise the costs while the earnings from fraud are constantly increasing. When a criminal organisation starts making profits from its network, these sums can be used to corrupt new athletes as well as to place bets: thus, their activities grow at a rapid pace. Therefore, it appears that after the start-up phase, the activity develops rapidly and the uncovering of a fraud case is certainly a sign of a well structured and settled activity.

These properties of fraud are illustrated by our model that extends the crime economy analysis by the study of the demand for fixed bets: a rise in this demand causes a rise in the general demand for bets.

Under certain circumstances, only an increase in betting volumes is beneficial to betting operators

Betting operators use effective hedging techniques, just like betting markets (which put bettors together without taking a position), and have an interest in seeing betting volumes increase. The analysis of the rational economy of participants confirms that betting operators and sports entities do not have the same interests.

Figure 31: Properties of Fraud

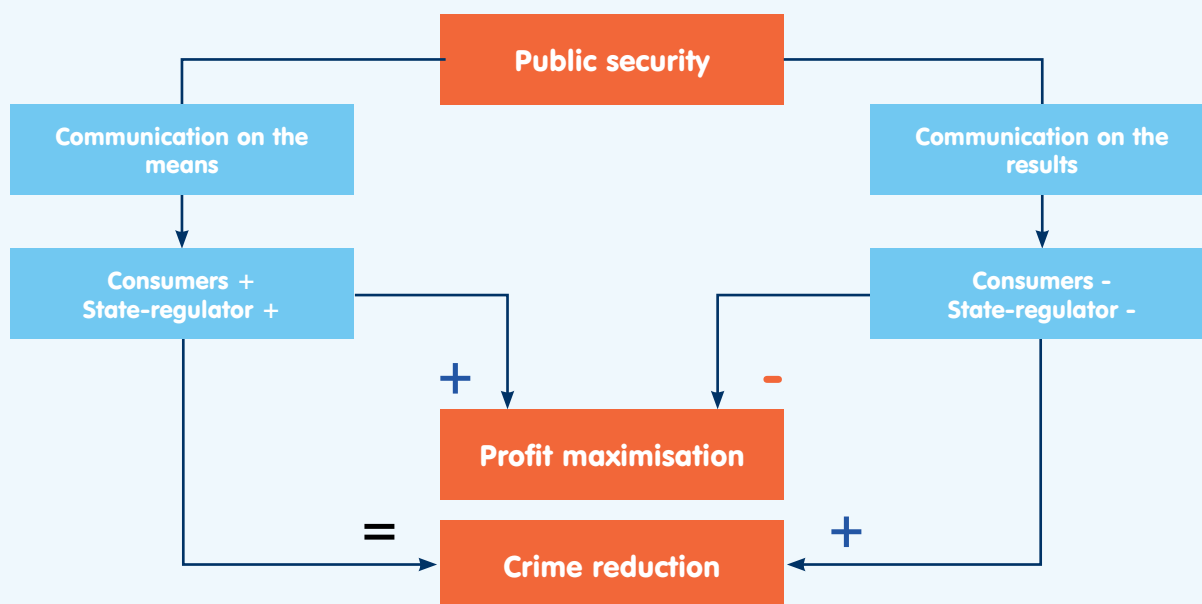


States should take the responsibility that belongs to them given the existence of conflicts of interests between stakeholders

Criminal activities underline an obvious fact that is sometimes forgotten: criminals do not evaluate their level of risk exposure according to intentions, rather, they evaluate it according to acts. A grasp of the parties' economic rationale shows their interest in the preservation of the status quo: the regulating States, protecting the interests of society, would gain from re-evaluating the credit that they provide de facto, and strictly monitor the progress achieved.

The criminal economy models provide a sufficiently precise account of the facts to allow the formulation of some recommendations.

Figure 32: Communicate on the Means or on the Ends?



Recommendations Based on an Analysis of the Economic Rationale of Participants

The theories exposed in the Report lead to the formulation of innovative recommendations for sports entities, operators and authorities.

A risk management policy adapted to the innovative criminal modes of operation

A study of the risks linked to the various betting formulas allows sports entities and operators to identify which ones

are most likely to be targeted by fraud (see above). These recommendations constitute an addition to the already well-known advice regarding the consequences of the choices by sports event organisers as to the mode of the organisation of competitions (contest design), each mode of organisation calling for the establishment of active risk-management. The study of risk relates to the different types and forms of bets or to the different ways of organising sports events, the choices stopping in one of these two domains when they affect each other.



The centralisation of the organisation of actions to be taken against fraud by the public authorities

It is recommended that public authorities should have an organisational role when it comes to fraud: they should, in particular, settle conflicts of interests and demonstrate an infallible resolution to combat crime. The collection of taxes can be used to finance these tasks. A Pigovian taxation seems to be the most appropriate.³²

Imposing a cap on the rate of return to bettors

In order to combat the manipulation of sports competitions which assist money laundering, the rate of return to bettors should be capped (the recent increases in these rates were more profitable for fraudsters than for honest bettors).

This cap can be lifted for bettors who would comply with the FATF³³ obligations concerning financial institutions.³⁴ However, the authorities must strictly monitor this compliance.

A discriminatory betting tax

In order to finance the security of sports entities, a betting tax would constitute a complementary tool for public authorities. A discriminatory nature of such a tax should be possible, in particular to encourage the betting forms that are the least exposed to fraud (like pari-mutuel bets); this would constitute a perceptible and significant risk management policy.

In addition, it seems necessary to impose strict monitoring of the use of the funds perceived in this way.

Assimilating betting operators to financial institutions

All betting operators should be considered as financial institutions according to the FATF and should be subject to the same requirements.

Agency relationship: creating incentives to lead stakeholders to reveal fraud

Some measures can improve the performance of security agencies in combating manipulations of sporting events by allowing the monitoring of the agency relationship.

32. A "Pigovian" tax: a tax that applies to agents whose activity produces negative societal externalities on society such that the private cost differs from the cost to society e.g. when a factory pollutes, its cost (private) is lower than the social cost, since it does not include the pollution it generates in its costs. Reasoning only on the private cost (which is low), it will produce more if it took into account the social cost (which includes the cost of waste treatment). The negative externality will therefore cause an overproduction. Pigou proposes to establish a fee to the amount of the external factor so that the social cost is the actual cost to the firm. The introduction of such a tax would reduce the negative effects.

33. The Financial Action Task Force (FATF) is an intergovernmental organisation established in 1989 by the Ministers of Member States. The objectives of the FATF are to develop standards and to promote effective implementation of legislative, regulatory and operational measures in the fight against money laundering, terrorist financing and other threats to the integrity of the international financial system, see further: <http://www.fatf-gafi.org/fr/pages/aproposdugafi/>.

34. See "Guidance on Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion", FATF, February 2013, available at: <http://www.fatf-gafi.org/documents/documents/revisedguidanceonamlcftandfinancialinclusion.html>.

8.

WHAT ARE THE ETHICAL
CHALLENGES INVOLVED
CONCERNING THE MANIPULATION
OF SPORTS COMPETITIONS AND
COMBATING THIS PRACTICE?





8. WHAT ARE THE ETHICAL CHALLENGES INVOLVED CONCERNING THE MANIPULATION OF SPORTS COMPETITIONS AND COMBATING THIS PRACTICE?

The rules for living in a society are constituted of legal norms on the one hand and rules that are freely endorsed by individuals or groups to organise their own lives and their relations with others. Ethics are part of the second category of rules that can also help to direct the organisation of collective constraint (in one direction rather than another).

The manipulation of sports competitions is unacceptable under ethical requirements. According to a humanistic approach, sport is not enclosed in “values” that are exclusive to it, rather, it is in combination with general values that affect humanity (such as education, the quality of human achievements, health, the compliance with standards, fundamental rights or personal development).

However, promoting these values is difficult and poses the question of whether there are specific conditions for their acceptance in the sporting sector.

Sports Ethics: From the Need For Rules to Controversies on the Values that Form their Basis

How can humanistic values that give meaning to sports be reconciled with social, geostrategic and economic realities created by competition? These are the current central stakes in the discussions on sports ethics.

An ethical approach to sports (as understood today) consists in identifying conflicts of values and understanding

how a reference to value judgments constitutes a part of the practices, rules and institutions.

Sports confronted with ethical issues

Sports are rooted in “games”, in other words, in free activities practiced for the sake of practicing them and for the satisfaction they provide. However, competition is the main source of the need for a sports ethics code, since it involves recognition and rewards (financial and political) that are associated with instances of infringement of rules and the insufficient adoption of value references deemed as important. Beyond cultural differences, sport is regarded as contributing to the human good. The ethical approach to sports highlights this contribution, in particular to health, to the search for excellence through human capacities, to the appreciation of competitors despite rivalries, to the search for equity, and to learning to respect common rules.

In addition, since sports activities form a part of social, political and economic transactions which are at the core of living in a society, this makes them important for community life. The support lent to sports by the public creates expectations in terms of justification and reinforces ethical expectations.

This support by the public is not exempt of debates on the values of sport.

The debate on the values of sport

Criticising the “values of sports” contributes to fighting certain myths by confronting the practices, the material and institutional situation of sports with actual practices. This criticism suggests advancements in the development and realisation of values of reference.

Advice on ethics can provide tools to criticise and structure institutional and public debate. In fact, ethics, taken from a rational perspective, cannot be limited to establishing a correct and immutable “code”. Its conclusions should remain open to criticism and its formulations (as well as its arguments and lines of argument) are likely to evolve. Ethics in the discussion provide in this regard a frame of reference.

The Difficulties in Implementing the Ethical Prescriptions Brought to Light by the Social and Practical Dimensions of Sports Practice

Transposing ethical requirements into sports practices presents three main difficulties: the primacy given to competition, the inclusion of sports in social life and the evolving values of society.

Reconsidering the cathartic function of sports

The main risk resides in the possible collapse of the ability of sports to channel, through pleasant and interesting tensions (concerning the end result of competitions in particular), the existing forms of rivalry present in human society.

The primacy of competition

The tensions characteristic of the sporting world involve the moral health and integrity of athletes in a way that is facilitated by the dissemination, outside and around sports, of an ideology of competition and of performance that could accentuate the exposure to unjustified risk taking.

Concerns for individuals and their rights

In order for collective action towards an ethical effort to have authentic value, priority should be given to the

fulfilment of the athlete’s moral integrity, and in particular to the commitment to treating him as a free person who is responsible for his choices and deserving of the respect owed to every human being.

The Contribution of Institutional Ethics to Sport: Identifying the Responsibilities and Suggesting Remedies

Sports ethics are incarnated in institutional frameworks that guarantee that the regulating principles of sports practices will actually be implemented and can evolve. In fact, if tradition plays a role in sports, it should not be frozen into social customs whose *raison d’être* are forgotten.

Identifying the areas of sport that concern individual responsibility and those concerning collective responsibility

The multiplicity of the institutions involved in sports makes it difficult to establish responsibilities, but it is essential to identify who is responsible (for what, towards whom, for whom, by what means and for what purposes). To this end, it is pertinent to consider and evaluate the levers that each actor controls, from an institutional ethics perspective. In addition, determining the frontiers between institutional responsibility and individual responsibility raises some issues that are sometimes pressing, concerning sports.

Lastly, care should be taken to ensure that the institutional distribution of competences is done in a way that guarantees a correlation between rights and obligations, and that is apt to safeguard the respective rights of stakeholders.

The adaptation of institutions to ethical challenges

The primary function of institutions is to contribute to the creation (and the reinforcement through time) of social routines or institutional practices that allow them to influence common life in desirable direction, in a way that allows persons to reap legitimate fruits from their practices while avoiding risks or dangers as much as possible.

In a context where the implementation of the norms in



place is flawed and where coercion is relatively inefficient, ethics should relay coercion, through trust, a credible display of commitment to shared values, and through adapted interactions between institutions or organisations.

The enactment of changes for ethical reasons always poses threats of producing unintended effects, and for this reason, it is essential to evaluate the risks linked to institutional changes.

This risk raises the issue of the conditions for promoting ethics in the sporting world.

Are there Specific Conditions for the Promotion of Ethics in the Sporting World?

A study prepared by sociologists of cases where ethics were used in the international sports arena during the period spanning from 1945 to 1975 allows us to see the way in which the principles of “good behaviour” were reintroduced in sport – this information can help in the elaboration of current projects.

This type of reminder can only be undertaken with success by taking into account the general values but also by shedding light on the specific functioning of the social sphere concerned, in this case the sporting world, in a way that ensures that the ethics corpus used adheres to the values and to the configuration of relations proper to sport. Analyses of the sports world presented by human and social sciences can be used to enlighten decision makers on this issue.

The evolving context of a mobilisation of ethics in the sporting world

Relations in sports are constantly evolving – especially the relationship between the sporting world and the authorities organising sports, but also with various social forces acting in this field. Changes taking place in the world create critical situations in the international sporting world and cause adaptations by sports organisations: at the end of World War II, during the Cold War, during the decolonisation period, under the influence of nationalist movements in

various regions of the world, with movements for racial or sexual equality, etc. Critical debates, followed by the production of principles of ethics are kicked off by tensions around centres of power in sports. They are developed by stakeholders that can be considered as challengers to the managers in place at the time.

The actors involved in mobilising ethics in the sporting world and their legitimacy

Analysing “what is not working” in the state of affairs of sports, and the formulation of ethical principles that should ideally inspire the conduct of managers as well as field athletes falls upon various categories of actors: sometimes, the institutional managers themselves amend their official codes (the IOC’s Code of Amateurism; fair play principles for FIFA; etc.); sometimes sporting champions express their personal opinions (see the example of the Williams Sisters’ “Decalogue” for tennis); lastly, reformer groups constituted in order to reform the main principles of sport adapt them to the current situation and lobby the powers in place in order to put the institution back on the right track concerning ethics if the institution is seen as “corrupt” or “decadent”.

The constitution of “groups” that take the initiative of elaborating ethical principles, and the operations that can confer a moral credibility upon them, raise practical issues on which a study of past and present achievements attempted to shed some light. In the light of these concrete experiences, the following issues should be discussed: what are the moral and cultural resources that members of an ethical committee or the components of a collective movement for the reminder of the values of sport should possess? What are the provisions needed? Which position can be occupied by such an initiative group or committee in relation to the established sporting powers? Lastly, in which framework can such a group render judgments and recommendations which are seen as “credible”, “significant”, or “admissible”?

The analysis shows that durable initiatives of ethics promotion emerge from groups that have two characteristics:

- A position of challenger vis-à-vis the sporting powers and the established institutions which can be embodied, in certain circumstances, by power struggles in the sporting world.
- An inclination to inject ethics in sports, where the ethical principles were acquired through education, through their belonging to a moral community or their personal experience (this was the case of coloured athletes who sustained a racist atmosphere during their sports career).

However, it cannot be said that power struggles or tensions related to power are the only driving force in producing principles of ethics in this field. Likewise, one cannot contend that displays of ethical principles only have a functional role within power struggles. Groupings studied that carry ethical principles are characterised by an “intermediary” distance from the power centers: not “too close” to the power centre, as is the case of the members in charge of the institution’s functioning, and not “too far”, such as athletes and personalities who express their personal views, but without being involved with the institution. In this position, these ethics-carrying entities can, at the same time:

- have a hold on the institutional functioning without being “taken” by them;
- develop a critique and proposals for restoring an ethical orientation in the practice of sports.

The conditions for mobilising ethics in the sporting world: authenticity and transparency

Taking a stance on ethics is an attitude that is not compatible with the presence of calculating and interested hidden agendas: it presupposes, on the contrary, honesty and candour, in other words, a mode of expression that is deeply rooted in personal or collective convictions and practices, and it requires great transparency.

The tools for mobilising ethics in the sporting world

Mobilising educators in sports and other surrounding areas with a view to a reinforced ethical approach to sports will consist in establishing several distinct teams which nevertheless collaborate closely.

1/ A nucleus of promoters who design, according to a strategic proceeding, an intervention plan in favour of “fair play” in sports, through education, laws, repression or incitement to choose “good behaviours”.

2/ Networks of field actors already convinced of the supremacy and necessity of “fair play” sports, and whose actions, already showing strong ethics, will be in a certain way “recruited” in the framework of actions undertaken in favour of moralising practices in the field of sports.

3/ Legitimizing authorities of high moral standing (like UNESCO) that underpin, support, caution and legitimate the various initiatives, keeping in mind that it is very difficult to sustain a legitimate position (a magisterium) of moral counselling and prescription in a field as divided as international sports.



9.

WHAT WERE THE HISTORICAL
POSITIONS TAKEN BY SPORTS
INSTITUTIONS WITH REGARD TO
ETHICS?





9. WHAT WERE THE HISTORICAL POSITIONS TAKEN BY SPORTS INSTITUTIONS WITH REGARD TO ETHICS?

Like sports ethics, sports institutions are at the same time a product of and a moment in history: that they did not always exist, and they are peculiar to some societies, located in a unique place, at a specific time. The process of 'sportisation', a neologism created by Norbert Elias, was initiated in Europe during the Renaissance and is in constant evolution even today: this process articulates the codification and the dissemination of rules, the quest for performance and the teaching of gestures, the progressive autonomy of game areas and of the sports calendar from civil and religious authorities (living communities, craft collectives, confessions and Churches, princes), the adoption of a common language made up of words and images, the appearance of a specialised press. It is obvious that the rules and values of sports were redefined in Europe and disseminated to the rest of the world through colonies and empires, and that the international sports institutions still have their seat in the heart of Europe in 2014.

This transformation process from games to sports is not limited to the codification of rules. It is completed by the creation of systems of values proper to the social groups dominating the practices (courtesy, popular honour codes). These systems are constantly redefined as illustrated in the 19th Century by British fair play and chivalry in sport, which was so dear to the French baron Pierre de Coubertin.

With a view to distancing sports from religion (secularisation) and from politics (neutralisation), the

International Olympic Committee (IOC) has taken control of the global sports scene since its creation in 1894: the Olympic ideology allowed it to federate the international sports federations (IFs) that were nevertheless regularly tempted by the prospect of secessionism.

Specifically, these federations followed a parallel path to that of the IOC: they strove, on the one hand to control continental and national federations and clubs linked to their practice, to the exception, however, of professional sporting leagues and sports competitions belonging to private operators; they invested, on the other hand, in the ethical questions that were being discussed during the 1980s in reaction to corruption accusations.

The issue of doping put the IOC and the IFs in a situation of competition, before reconciling them following the threat of the intervention of States, which were seen as guarantors of public health and the integrity of competitions.

The creation of SportAccord³⁵ in 2009 reactivated a very old process of the distribution of the powers at the global scale between IFs and the IOC.

The Sporting Rule, Fair Play and Chivalry in Sport

Before the establishment of sporting rules, clubs and federations could not be envisaged with the disdain of a modernity that would have triumphed against archaism.

In the codification process that took several hundred years to complete, and which led to a shift from medieval

35. SportAccord defines itself as the Union of International Sports Federations including Olympic and Non-Olympic sports and associate members composed principally of multi-sports games organisers, see: <http://www.sportaccord.com/en/who-we-are/mission-and-values/>.

games to modern sports, the jeu de paume seem to be among the first, historically, alongside fencing and horseback riding. The first can be distinguished from fencing and horseback riding, which are conceived as practice for war. Other methods of entertainment that require less physical involvement like darts, billiards and card games also participated in the first regulation movement. A place of games was established along side the contours of the field, the equipment, the movements and hits allowed and the keeping of the score. This was done to avoid disputes between players and bettors, often the same people), because games are inherently linked to bets.

The values of sport would have been found exclusively in English and Imperial history – in the sense that sports values were adopted by native elites submitted to London – if a young French baron had not decided, in 1892, to revive the athletic competitions of antiquity and give them an international dimension. In fact, Pierre de Coubertin (1863-1937) operated an aristocratic vision to the motley of physical practices that were various in their form as well as in their socio-cultural essence: the corporal arts of the nobility such as fencing, shooting or horseback riding, apparatus gymnastics which was at the same time popular and provided a patriotic-military ambiance, Anglo-Saxon sports, and swimming strokes which became swimming. His project, that he had originally planned to reserve for young people from the bourgeoisie and nobility, was not only disseminated in the direction of the male popular classes, but ended up covering the world with the disappearance of European colonial empires between 1920 and 1970.

Olympism, the IOC, the Olympic Movement

The International Olympic Committee is the only international sports institution created since its genesis, in 1894, in accordance with a corpus of values presented as inherent to the Olympic Games re-established in Athens in 1896. Constituted more than a decade prior to the international sporting federations, the IOC succeeded in gaining recognition as the umbrella institution of global sports thanks to the quadrennial ritual of Olympic Games and its ideological magisterium: above the major conflicts of the 20th Century, it succeeded in maintaining its dominion over what is later called “the Olympic Movement”.

The financial flows generated by media since the 1960s allowed President Juan Antonio Samaranch to operate a Copernician redefinition of Olympism in the early 1980s: the participation of professional athletes in the Olympic Games would henceforth combine with the conclusion of rich commercial partnerships. In order to protect itself from new assaults by possible competitors, the IOC led a seduction operation towards supra-State institutions (the United Nations, Council of Europe, European Union...) and attempted to reconstruct its ethical image following the Salt Lake City scandal.³⁶

36. Famous corruption case related to the awarding of the Winter Games to the U.S. city of Salt Lake City. Six IOC members were expelled, four resigned and ten others received a warning. No less than five investigations, including an FBI investigation were undertaken.



From the intervention of Olympism to neutralism during the Cold War

Although it has the appearance of tradition with its references to antiquity, Olympism is nothing more than an ideological construction invented by Pierre de Coubertin in response to the abuses observed during the first editions of Olympic Games. Regarding amateurism, its definition kept evolving under the pressure of various lobbies to the point that Pierre de Coubertin ended up preferring an oath of sporting loyalty: the Olympic Oath. The European war of 1914-1918 weakened the pacifist convictions of the IOC's President and his colleagues who decided to exclude nations from the Games considered as "responsible for the war" by the victors. The period between the two wars constitutes in fact a time of ideological tensions on an intransigent line of amateurism and of a distribution of roles between international sporting federations and the IOC as witnessed in the first Olympic charters. The organisation of the Games in Berlin in 1936 by Hitler's Germany raised important issues for the IOC, which was confronted, for the first time, with a dictatorship. During the cold war between the United States and the USSR, which lasted more than four decades, the IOC adopted a neutral position to avoid being accused of sacrificing the defence of liberties.

The reinvention of Olympism during the market era

The 1980s marked a turning point in the history of the IOC: the end of amateurism. The evolution of American televisions since the 1960s and the invention of sports sponsorship at a global scale by Horst Dassler during the 1970s are at the core of other major transformations made by the Olympic movement: the major contracts with media outlets and sponsors, the financing of the IOC itself, the development of an internal administration etc.

Since the Second World War, the document of reference which is the Olympic Charter has kept expanding. Each annual session of the IOC was marked with multiple amendments suggested by the members of the Executive

Committee to bring answers to particular and specific situations. With the advent of the 1980s, Olympic Charters were so regularly rewritten that they constituted a complex legal tool with limited effects.

In a certain way, the IOC controls the global sporting field much better than the UN organises global society. In fact, beyond the National Olympic Committees (NOCs) and IFs, it influences even local sporting associations and clubs. In addition, it imposes its regulations on the Organising Committees for the Olympic Games (OCOG), as well as on athletes and judges. Lastly, through the subtle effect of "Olympic recognition", other organisations and institutions such as the International Olympic Association for Medical and Sports Research (AOIRMS), the International Association for Sports Information, the International Sports Press Association (AIPS), the International Cinema and Television Sports Federation etc. are indebted to it. The IOC also recognises other non-Olympic sports. It conducts a policy of magnetisation towards other sports organisations that are not directly under its control, such as the International University Sports Federation, the International School Sports Federation, the International Sports Federation of Catholic Education, the International Sporting Work Confederation, the International Council for Military Sport, the International Sporting Union for Police, the International Association of World Games concerned with non-Olympic Sports etc.

At the end of the fifth presidential mandate of Samaranch, a corruption scandal shook the IOC and forced it to reconsider its internal organisation and promote a new ethic towards the global opinion and worried sponsors. This deep crisis radically transformed the IOC, which shifted from a "private club" organisation to that of a modern and dynamic enterprise. In 2001, Belgian Jacques Rogge, elected to succeed his Catalan predecessor, worked to re-establish the IOC's image while ensuring its financial success.

International Federations and the IOC: an Intertwined History

The challenges to which local, national or international sports organisations are confronted are as old as sport itself: cheating, violence, corruption, doping, fixed matches and illegal bets. Many examples have emerged, not only since the end of the 19th century, but also during the preceding centuries, not to say in antiquity, if one is to remember that in Olympia, cheats, whether athletes, judges or organisers, were sentenced to offer a statue to the god Zeus as reparation.

The takeover of the global space by the IOC and the reaction of International Federations

IFs fought for their independence since 1925 and obtained control of their sport's regulation, while the IOC maintains the organisation of the Olympic Games without enduring the competition of world championships for each sport.

The difficult emancipation of International Federations from the IOC

Although four out of five IFs corresponding to the actual Olympic Sports were created before World War II, in three successive waves (1881-1892, 1900-1913, 1921-1934), they encountered many difficulties in the emancipation of the IOC as is shown by the often late creation of their own world championships.

A late affirmation of sporting values

In terms of affirmation of sporting values and also of ethical action, IFs were for a long time lagging behind the IOC, which possessed, in a certain way, a monopoly. The launch by UNESCO of an offensive strategy during the 1960s on the subject of combating violence in sport and fair play led the IOC to tackle these issues during the early 1980s, followed by the IFs in the 1990s and 2000s.

Inefficient devices for combating doping

It must be acknowledged that in the field of combating doping, the IOC and IFs won few victories. Athletes from the German Democratic Republic were rarely sanctioned for doping although it is now well known that a systematic doping scheme was organised at the highest level of the State and of the sports hierarchy between 1960 and 1980. In addition, the very small number of American athletes sanctioned until this day, to the exception of the well publicised cases of Ben Johnson in Seoul in 1988, and Marion Jones in 2008 after the "Balco affair" started in 2003, is not indicative of effectiveness in the fight against doping led by IFs and the IOC. The "Festina" (1998) and "Armstrong" (2012) cases also showed this impotence despite the creation in 1999 of the World Anti Doping Agency (WADA).

SportAccord's offensive strategy with regard to the IOC

In the context of destabilisation of the IOC by media outlets and by States who are trying to regain control through the fight against doping and corruption, IFs changed their global organisation by transforming their general association (GAISF) into a more offensive composition called SportAccord. Under the presidency of Marius Vizer at the head of this organism since 2013, it seems that IFs are capable of forcing a renegotiation of the distribution of sporting competencies on the global scale.



10.

WHAT ARE THE REACTIONS
TO THE PHENOMENON OF
THE MANIPULATION OF
SPORTS COMPETITIONS?





10. WHAT ARE THE REACTIONS TO THE PHENOMENON OF THE MANIPULATION OF SPORTS COMPETITIONS?

The manipulation of sports competitions generates many threats, both to public order *latu sensu* because of acts of corruption than can accompany such manipulations, money laundering, its links with transnational organised crime, etc., and to the values of sports (*supra*).

How did the Sports Movement Integrate the Fight against the Manipulation of Sports Competitions into a “Sports Public Policy”?

Sports institutions took it upon themselves to transcribe these values into law and actively worked on establishing the legal means to combat – within the framework of their responsibilities and capacities – violations of the integrity of sports competitions.

Building a public order for sports

This transmutation of the discourse on the values of sport into a legal corpus of rules of behaviour accompanied by sanctions was made possible by the fact that sports organisations create their own law themselves, the *lex sportiva*. Although inevitably attached to the legal orders of States, the *lex sportiva* constitutes a legal order apart, organised according to its own mechanism and according to fundamental principles that are unique to it.

The *lex sportiva* is organised around a “sports public

policy” whose object, as a minimum for social cohesion within a sporting movement, is to ensure the compliance with and the primacy of certain fundamental principles that apply to all sports organisations and their members, and that are non-derogable. The violation of these rules is considered as an abuse of the sports order itself (and to the values that embody it).

The Court of Arbitration for Sport (CAS) belongs to the sporting movement and embodies a sort of supreme court for sports. This body plays a vital role in the development of the sports public order.

The formulation of a general principle of integrity in sports competitions

The CAS revealed certain “principles of sport law”, that should be seen as principles specific to the sports legal order. For example, the rule of objective responsibility in doping was qualified by the CAS as a principle of sports law after this rule was adopted by the IOC and later by almost all international federations, but before being codified in the World Anti-Doping Code.

But the general principle of integrity to which the principles of fair play and equity are attached is of particular interest. This principle was defined in the 1999 AEK Athens and SK Slavia Prague v. UEFA award. In short, the CAS

considered that the integrity of sport – in this case, football – is directly linked to the authenticity of the results, and that the spectators should perceive that the competitions are authentic tests of the athletic, technical, coaching and management capacities of the teams participating, and that these teams are doing everything they can to win.

The CAS considers the compliance with the principle of integrity as the *sine qua non* condition for the survival of sport and the sports movement. On this basis, the CAS developed a zero-tolerance judicial policy with respect to abusive behaviour.

Although the principle of integrity has its material source in the numerous instruments adopted by sports organisations that recognise its importance, it is through CAS case law that this principle was imposed because of its necessity and the needs of the sporting movement.

Disciplinary repression of breaches of the integrity of sports competitions

The general principle of integrity of sports competitions can lead to sanctioning certain behaviours that, although not prohibited by the applicable disciplinary code, are still obviously contrary to sports ethics. This possibility is very important in the context of the manipulation of sports competitions, since such manipulations can take bold and unexpected forms that are not always foreseen by the disciplinary regulations of sports federations.

However, disciplinary bodies are not allowed unrestrained authority under the pretext that the protection of the integrity of sports competitions is necessary. In fact, disciplinary bodies should comply with general principles of law from State legal orders (although, because of the specificity of disputes decided by the CAS, this body sometimes uses a more flexible interpretation than the one used by State tribunals).

How did the Public Authorities React to the Threat to Public Order Embodied in the Phenomenon of the Manipulation of Sports Competitions?

The issue of the manipulation of sports competitions is, today, undeniably, an issue of international public interest listed in the agenda of global international organisations or agencies such as UNESCO – in particular through the International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport (MINEPS), the UN Office on Drugs and Crime (UNODC), which cooperates with the IOC, or even Interpol. It is also recognised by regional organisations such as the European Union, which is preoccupied by the manipulation of sports competitions as well as by the regulation of sports bets, or the Council of Europe, which is the instigator of the process of developing a convention against the manipulation of sports competitions, open to European as well as non-European States. The provisional text of this convention, developed within the framework of the European Partial Agreement on Sport (EPAS), was agreed to by the Drafting Group on 22 January 2014 in order to be submitted to the review of the Committee of Ministers of the Council of Europe³⁷ (see *infra* its main trends). Sustained by the strong advocacy of non-governmental organisations and legitimated by the regular uncovering of cases of the manipulation of sports competitions, interest shown towards this challenge to sports integrity and public order, which are protected by States, is unwavering. Its first credit could be to persuade States that on the one hand, the manipulation of sports competitions cannot be controlled and sanctioned exclusively by sports institutions, and on the other hand, the need to combat illegal bets does not only concern States, who choose to authorise sports bets, but is a shared responsibility, as is the fight against money laundering.

However, international mobilisation, to this day, has not gone beyond the adoption of statements of principles, draft agreements or one-off operations which drew attention either to small-time practices that are however likely to become common practice in sport and ruin its societal virtues

37. The Sorbonne-ICSS Chair was included, as well as the ICSS, in the monitoring of the preparatory work of this draft convention.



(see the handball case in France), or to practices that can fall under organised transnational crime (see *Calcioscommesse* case). The instruments of a well-coordinated fight against the manipulation of sports competitions still need to be adopted and supplemented by operational tools (see diagnostics and suggestions *infra*).

This international agenda has already had repercussions on national agendas, since several States have initiated revision processes regarding their legal devices in order to better regulate the sports betting market, better combat illegal bets and/or better prevent the manipulation of sports competitions. Although one should not fall prey to illusions about the results of certain debates that have become a

ritual such as is the case with the manipulation of sports competitions itself, improving the instruments created by the pioneer States in the combat of these abuses should be given great attention, in order to provide guidance to the States that are less informed or ill-equipped, or that are still getting a grasp of the threats posed by such sports corruption.

In any case, because of the transnational character of sports competitions, sports bets, and acts of manipulation of sports competitions, even the best national frameworks will be ineffective unless they are adapted to the devices of sports institutions and to international cooperation mechanisms.

11.

HOW IS THE DUTY TO COMBAT THE
MANIPULATION OF SPORTS
COMPETITIONS DIVIDED BETWEEN
SPORTS INSTITUTIONS AND PUBLIC
AUTHORITIES?





11. HOW IS THE DUTY TO COMBAT THE MANIPULATION OF SPORTS COMPETITIONS DIVIDED BETWEEN SPORTS INSTITUTIONS AND PUBLIC AUTHORITIES?

The fight against the manipulation of competitions is necessary for the protection of the sports public policy but also of the interests that public authorities are charged with defending. This fight requires cooperation between the sports movement and public authorities, but also incites fears that “the autonomy of the sporting movement” will be compromised. Therefore, it is necessary to better understand the bases, expressions, and limits of the concept of “autonomy of the sports movement”.

Basis of the “Autonomy of the Sports Movement”

The autonomy of the sports movement gradually achieved the status of dogma through historic circumstances. The sporting movement was initially built as a lightly-regulated social and cultural space. Specifically, sports activities evolved, and the practice of sports gradually became organised and institutionalised, in an area where States did not wish to invest in specific rules, either through a lack of interest or by an absence of necessity. Thus, claims regarding the principle of autonomy gained momentum and were understood by some stakeholders of the sporting movement as meaning that sports were not subject to any regulation by State law.

The reality is that the principle of autonomy is only recognised by States as a principle of the rationalisation of the respective intervention of public authorities and sporting authorities; and cannot be opposed to a State as a principle that legally and definitely affects its own powers, nor as a total independence of the sporting movement from public authority.

Ordinary Manifestations of the Autonomy of the Sporting Movement

The ability of the sporting movement to produce rules constitutes the main vector of its autonomy (*supra*). This autonomy is further reinforced by the fact that sports organisations are subject to their own judge. In order to maintain their autonomy and avoid interference from State authorities, sports organisations seek, as much as possible, to internally resolve disputes arising in the framework of their activities.

However, claims in favour of a sporting exception, even partial, should be rejected. Such a claim was in fact rejected in the framework of European Community law (See the famous *Bosman*, 1995, and *Meca-Medina*, 2006, cases). In internal legal orders, the position of States is less clear, since

they have taken an ambivalent approach to the normative autonomy of sports organisations, at least when the definition of the rules of a sports discipline is involved. In any event, the extent of this autonomy can only be defined in connection with national law rules that provide it with the space in which to exist. In addition, sports organisations do not totally escape the jurisdiction of national judges. They are under the obligation to act within the State's legal framework and ordinary jurisdictions may be competent to judge their actions, and can take into consideration the specificities of sport.

The autonomy of the sporting movement can be considered as established within the following limits: the autonomy of sport from political power, the self-regulation power of the sporting disciplines (which includes the organisation of the sporting discipline and competitions, but does not include economic relations that are connected to them) and the institutional autonomy of the sports movement as a condition to the use of their power of self-regulation. These principles are recognised.

Effectively, the principle of autonomy of the sports movement is an illustration of the principle of subsidiarity, which entrusts the entity that is in the best position to effectively achieve the objectives sought – because it has more expertise or because it is more directly linked to the recipients of the rules to be adopted – with the proper powers. But the principle of subsidiarity also presupposes that the distribution of responsibilities is flexible, depending on the objectives and stakes, and that the activities of various competent authorities are articulated.

Shared Responsibilities and Constraints in the Fight against the Manipulation of Sports Competitions

Protecting good order in sport as well as national and international public order

The claim that public norms have on sporting norms was reinforced because of the growing interactions between the interests of sports organisations, those of society and the interests of the State (the general interest).

There is a traditional distinction between interventionist and liberal States when it comes to their relationship with the sporting movement. However, all States, even the ones that have not adopted interventionist policies, develop sporting policies whose object is, at the minimum, to define the objectives that must be pursued by sports organisations in order to benefit from public subsidies.

Sports institutions cannot deal with the proliferation of cases of the manipulation of sports competitions on their own – a fortiori if these manipulations are linked to sports bets, which can be seen as potentially affecting public order. Public authorities have to tackle this issue.

In fact, the abuses that can be seen today in sports closely affect the essential interests protected by the State. On the one hand, the exemplarity expected of sports (supra) and of athletes is met with the dissemination of a systemic corruption, whether the term systemic is understood under its legal or moral definition. On the other hand, corruption in sports is often only a link in an organised crime chain that threatens public order, distorts sports markets and poses a menace to the integrity of national political systems because of the vulnerability of the sporting and political areas in certain societies.

Thus, it appears that the elements constituting the national or international public order of sports coincide objectively to a large extent and that the responsibilities of the “sporting authority”³⁸ and of “public authorities” should be seen as complementary and not in opposition, when it comes to combating the manipulation of sports competitions.

38. As qualified by G. Simon.



Fighting against the manipulation of sports competitions without affecting the fundamental rights of human beings

When it comes to combating the manipulation of sports competitions, certain preventive measures, such as the supervision of athletes or the exchange of information between different platforms that monitor sports competitions and online betting activities could directly affect the right to privacy of athletes and their entourage, or their freedom of movement. Other measures, such as the prohibition of an athlete or his entourage from betting on his own competition or on a match in the same sport can constitute violations of the freedom to provide services, if the prohibition is not strictly proportional to the objective pursued.

Specific risks of violating fundamental human rights can also be seen in the framework of the prevention of the manipulation of sports competitions that can arise in the proceedings and disciplinary or criminal sanctions, or even the application of both types of sanctions in connection with the manipulation of sports competitions.

It is therefore necessary to create preventive and repressive rules while keeping in mind the risks affecting the individuals concerned and also the risks affecting sports institutions: the legality of preventive and repressive measures could be jeopardised and the legitimacy of the fight against the manipulation of sports competitions could be affected.

This does not mean, however, that human rights rules prohibit any and all restrictive measures that would seem appropriate for combating the manipulation of sports competitions. The test for assessing the validity of such a measure, in cases where such a measure would seem to contradict a human rights obligation, consists in determining whether the objective pursued by the measure is legitimate – which is a priori the case for combating doping and the manipulation of sports competitions – and whether the restriction imposed to the exercise of the rights involved is strictly proportionate to the objective pursued.

Nevertheless, requiring sports organisations and sports law to comply with human rights obligations should not lead to the disregard of the specificities of the fight against the manipulation of sports competitions (in particular when it is linked to transnational organised crime) or to denying any “sports specificity”. As they often do, judges can modulate or even tone down the severity of the instruments they apply, by means of distinctions or restrictions that are proper to sports. This approach comes from the recognition of a certain form of subsidiarity, since it would amount to recognising a “margin of appreciation” for sports organisations, since they are in the best position to determine the means that best serve the interests of sports.

Thus, the adoption and implementation of a principle of “responsible autonomy” for the sports movement would formalise the awareness of sports institutions that an expansion of authority or power inevitably calls for a correlative increase in control. The sporting movement became aware of this fact and provided an outline of this principle through the IOC President’s address before the United Nation’s General Assembly in 2013.³⁹

What remains to be dealt with is a reflection on a precise and generally accepted definition of the concept of “responsible autonomy”.

The Concrete Implementation of the Division of Responsibilities between the Public Authorities and the Sports Movement

Coordinating public action with sporting action

The implementation of rules of law applicable to an action that gravely disturbs public order which is under the protection of public authorities, and the public order placed under the protection of sports institutions, should be based on defined principles.

The ultimate power is in the hands of the public authorities who are the guarantors of public order for society. Therefore, these authorities can place their interests above those of the sporting movement. In addition, they can compel sports

39. Available at: http://www.olympic.org/Documents/IOC_President/2013-11-6_Speech_IOC_President_Bach-Olympic_Trucce_adoption_Speech_4_November.pdf

institutions – through encouragements, incentives, cross-compliance policies, duties and even sanctions – to take measures that they - the public authorities - deem essential for controlling threats to public order, without infringing the autonomy of the sporting movement in excess of what is necessary for the preservation of public order.

Sporting institutions and public powers each have exclusive control of certain elements (for example, regarding access to different types of information on acts violating sports ethics and national rules) and implacable powers (the State cannot replace the sports disciplinary powers, and disciplinary proceedings cannot oust criminal proceedings). Their actions should be presumed as complementary and be coordinated, structurally, and in the specific cases that require such coordination.

Concerning preventive education and awareness, efforts made by the stakeholders of the sporting movement and the public authorities can – a priori without difficulty – either be added up, or substituted depending on the model that is determined as being the most effective and most efficient.

Regarding means of prevention by regulation, control, monitoring, and in particular repression (disciplinary and/or criminal), it is important to define, on the basis of a classification of cases of manipulation of sports competitions (depending on the protagonists, the gravity of the acts, the existence of a link to sporting bets, etc. see *supra*), whether

the fight against the manipulation of sports competitions should be conducted by:

- The sporting movement exclusively (whether or not there are links with betting operators);
- The sporting movement in parallel with public authorities (regarding the regulation of the sports betting market);
- Or the sporting movement and the public authorities cumulatively through the conduct of criminal and disciplinary proceedings in the same case (even if not all the protagonists are facing the two types of sanctions).

In this last hypothesis, the practical conditions of a close cooperation between the sporting movement and the public authorities should be established in order to avoid symbolic, practical or legal encroachments (for example, if information communicated by public authorities to a sporting institution are leaked or if a discrepancy between the criminal and disciplinary proceedings weakens the legitimacy of the sanction).

Lastly, it is obvious that the methods of articulating the powers and actions of the sporting movement and the public authorities are not to be determined in detail by specific rules. Such an articulation should be determined, on the one hand, according to general principles guiding and framing public action, and on the other hand, through the prudence and experience of the entities involved.



12.

WHAT ARE THE LIMITATIONS OF
CURRENTLY AVAILABLE
INSTRUMENTS FOR COMBATING
THE MANIPULATION OF SPORTS
COMPETITIONS?





12. WHAT ARE THE LIMITATIONS OF CURRENTLY AVAILABLE INSTRUMENTS FOR COMBATING THE MANIPULATION OF SPORTS COMPETITIONS?

An Insufficient Cooperation at the National Level

A lack of coordination at the national level

Very few countries have implemented a real coordination involving the main stakeholders on the issue of fixed matches, i.e. the public authorities (ministry of sports, justice, interior, regulator of sports bets and authorities that are competent to combat money laundering), the sporting movement and betting operators (legal). This element is essential if concrete results are sought.

In fact, if conducted properly, this type of coordination allows stakeholders to:

- Inform the stakeholders of the risks inherent to the phenomenon;
- Use the expertise of cooperative betting operators (identification of irregular bets, athletes betting on their own competitions, etc.);
- Define the contours of an adapted organisation (for example, by naming an “integrity” officer within each structure and defining the operational procedures in the event of a crisis);
- Share the good practices and experiences in the most reactive sports disciplines;
- Harmonise certain rules (for example, regarding disciplinary sanctions or conflicts of interest);
- Pool certain human and financial resources in a way to

optimise the costs of prevention and repression; this last element is very important especially since certain sports disciplines have limited budgets.

Australia and Norway are among the first countries to set up an adapted structure and a coordinated national action plan. For its part, the Danish DIF (Sports Confederation) laid out compulsory provisions for all the national sports federations (prohibitions to bet and to publicly divulge privileged information for betting purposes, obligations to report an approach, etc.).

A fragmentary operational cooperation between the sports movement and sports betting operators

Although instances of cooperation between the sports movement and betting operators are becoming more frequent, when it comes to combating the manipulation of competitions relating to bets, such cooperation is still of a fragmented nature.

This can be explained by the fact that the interests of sports organisations and those of betting operators are often inconsistent: the profitability of betting operators, the protection of the integrity of sports and the coordinated fight against crime constitute variables of a complex equation.

However, these two interest groups have developed a certain number of actions destined to combat the manipulation of sporting events.

The Code of Conduct on Sports Betting for Athletes constitutes an important example of such an action.⁴⁰ It shows that sports betting operators can, when they decide to, actively encourage the efforts of society's representatives on this subject. This Code was developed within the framework of a partnership between EU Athletes (the European syndicate of professional athletes), the European Gaming and Betting Association (EGBA), the Remote Gambling Association (RGA) and the European Sports Security Association (ESSA) and plans to supplement the rules established by the law and/or the sports regulations specific to each country. This project's ambition is to create the foundations for a complete and proportionate education programme destined for athletes and containing advice that is adapted to the sport and the country as well as specific examples illustrating each situation. After an introduction, the code establishes six guidelines and enumerates four points of general advice.

However, establishing guidelines designed exclusively for the sporting world, and in particular for athletes, is not enough.

It is also important to standardise the rules for sports betting operators. In this regard, the main existing instrument is the EL Code of Conduct for Sports Betting⁴¹ developed by the European Lotteries (Swiss association assembling European lotteries and whose net revenues are attributed, following a public decision, to good causes and/or to the State budget – article 4.1.2 of the Statutes).

The use of monitoring systems for bets and the access of sports institutions to timely alerts constitute an essential tool for cooperation although, in themselves, monitoring systems face certain limitations.

Insufficient Cooperation on the International Level

The Report insists and demonstrates several times that it is difficult to conclude enquiries and investigations that

exceed national boundaries.

In this regard, it is useful to present the Calcioscommesse modus operandi diagram (see figure 33) in which the entity financing the manipulations is in Singapore whereas the corruptors act in Italy and bets are placed all over Asia, and the laundered money is placed all over the world through a structure in Panama.

Although Interpol has created a "task force" whose purpose is to coordinate the efforts of some twenty national police services and combat manipulation in football, there are still a lot of operational difficulties, such as:

- The dematerialisation of some of the criminal activities with the advent of the internet;
- A lack of human and financial resources allocated by States, either because the issue is not a priority or because it is still ignored or poorly understood;
- A lack of expertise in the area of sports bets and the modus operandi of criminals in the area of sports;
- The lack of material evidence in most cases.

The need for a "Sport Police" that can serve as an observatory for corruption would therefore seem necessary.

Nascent Multiparty Rapprochement Mechanisms

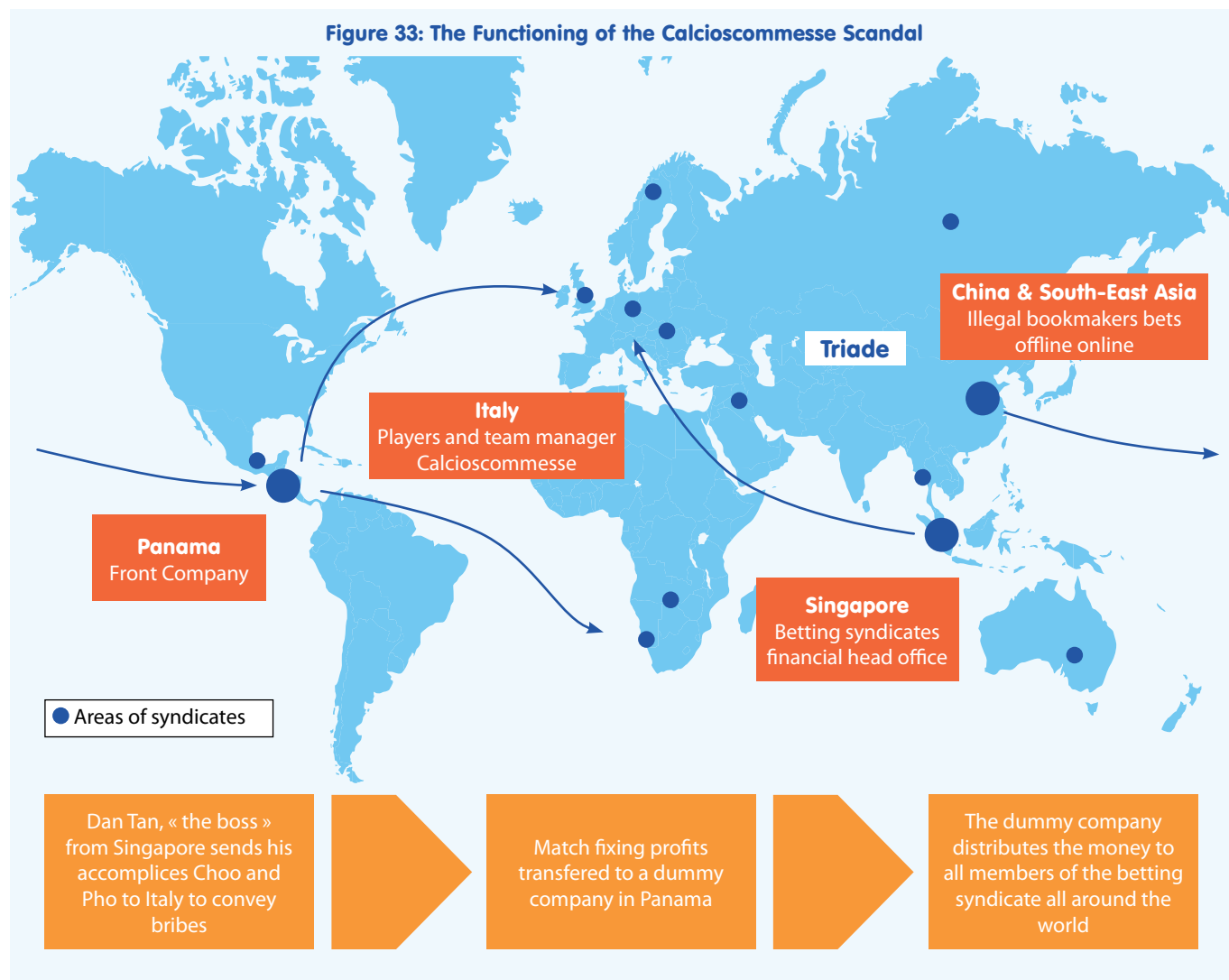
In order to combat the manipulation of sports competitions, the various stakeholders – States, sports organisations and betting operators – undertook institutional or conventional rapprochements on the national, international and transnational levels in order to unite their efforts and set up more effective prevention, detection and even repressive tools. Some of these cooperation mechanisms and networks are established between counterparts (for example, between national regulating authorities) whereas other transversal schemes bring together different stakeholders. The general view (States, international organisations, sports organisations, the gaming industry) is that the latter form of cooperation should be privileged henceforth.

Concerning institutional cooperation, for the moment,

40. Available at: <http://www.protect-integrity.com/the-code-of-conduct.html>



Figure 33: The Functioning of the Calcioscommesse Scandal



there is no international organisation comparable to the World Anti-Doping Agency within which States, sports organisations and even betting operations can be represented. However, numerous formal and informal arrangements already exist.

The sporting movement, which is based on extremely hierarchical pyramidal institutional organisations, can use the existing networks in order to convey its policies for

combating the manipulation of sports competitions and to disseminate the main principles of the *lex sportiva* within the sporting world.

The national regulators of the gaming and betting markets also organise themselves on the international and regional levels by forming associations (the International Association of Gambling Regulators – IAGR – or the Gaming Regulators European Forum – GREF – for example) to establish the

41. Available at: <http://www.elms.ch/codeofconduct.php>

general outlines of a concerted market regulation policy.

The gaming industry has also established certain transnational networks with the creation of the European Lotteries (EL) and the World Lottery Association (WLA) for instance. The main online and offline sports betting operators came together, in 2005, within a private-law association – European Sports Security Association (ESSA) whose specific mission is to combat sports corruption in relation to sporting bets.

Regarding forms of conventional cooperation, there is a much higher number of initiatives of different forms and nature.

Firstly, certain States have put in place on the national level, units or platforms of cooperation between public authorities (the sports betting markets regulating agencies, the prosecution authorities, etc.), sports organisations and the gaming industry.

At the international level, cooperation agreements between national regulatory agencies for the gaming and betting markets, have often established agreements (often memorandums of understanding) that aim to encourage and facilitate a voluntary exchange of information.

But there are also certain cross-cutting arrangements which are based on cooperation between various stakeholders in the fight against the manipulation of sports competitions. With the goal of facilitating the exchange of information, certain agreements have been concluded between national regulatory agencies and sports organisations or between national regulatory agencies, sports organisations and the gaming industry. It is not uncommon to add an operational arm to these cooperation mechanisms in order to establish detection mechanisms for suspicious bets which can make use of the more developed means available to national regulatory agencies and the gaming industry (*supra*).

This type of arrangement could be more widely used, at least for large sporting events, as can be seen through the recent launch by the IOC of a surveillance system for bets named the “Integrity Betting Intelligence System”

(IBIS) for all Olympic competitions and available for all IOC recognised IFs.⁴² Lastly, pooling the efforts and resources of all the stakeholders could serve to establish prevention tools destined to educate the persons concerned about the dangers of the phenomenon of manipulation of sports competitions. The joint initiative launched in 2011 with the INTERPOL-FIFA Training Education and Prevention Initiative – is the most developed example of such efforts.

There are many possibilities in terms of cooperation. No cooperation formula is to be excluded *a priori*. However, the current tendency is towards informal rapprochements. Few obligations are undertaken on a binding basis (although certain agreements involving the French agency regulating online games – ARJEL – constitute, *a priori*, real legal undertakings concerning the exchange of information, these instruments leave the authorities with a large margin of appreciation). In consequence, the effectiveness of these existing cooperation networks is mainly based on the goodwill of the parties.

In addition, the cooperation tools are, for the time being, mainly established as bilateral agreements. Initiatives of a larger scale, of regional or global proportions, are still scarce although the transnational character of the corruption networks acting on the sports betting market requires cooperation on a larger scale. In addition, although the stakeholders take firmer stances and act accordingly in connection with large sporting events, the effectiveness of the fight requires the establishment of devices capable of covering any type of sporting event and any type of sports betting market. Experience has in fact shown that amongst the sports competitions that are most prone to manipulation we also find those presenting modest stakes specifically because they are subject to lower levels of monitoring even if it is more difficult to place large volumes of bets without attracting the attention of operators and monitoring systems. Lastly, these cooperation mechanisms would without a doubt be more effective if they were more transparent and if they were based on binding undertakings.

42. IOC press release from 14 December 2013, available at: <http://www.olympic.org/news/ioc-steps-up-fight-for-clean-sport-with-interpol-mou-and-new-intelligence-system/222491>



Figure 34: Classification of Sports on the Basis of Risks of Manipulation

| Group 1: Significant or established risks of manipulation | Group 2: Low risks of manipulation | Group 3: Very low risks of manipulation |
|--|--|---|
| <ul style="list-style-type: none"> • Baseball • Basketball • Cricket • Football • Rugby • Tennis | <ul style="list-style-type: none"> • Aquatics • Archery • Bobsleigh & Tobogganing • Cycling • Darts • Floorball • Gymnastics • Hockey • Muaythai • Netball | <ul style="list-style-type: none"> • Air Sports • Chess • Draughts • Fistball • Polo • Racketball • Sleddog Sports • Sport Climbing |

The Uneven Efficiency of Normative Devices Internal to Sports Institutions

As already explained, the CAS plays an important role in the supervision of disciplinary sanctions and updating the general principles of the *lex sportiva*. However, this body acts a posteriori – after the manipulation and even after the sanctions are imposed by the disciplinary bodies. The concrete preventive actions taken by sports institutions in order to prevent manipulation of sports competitions and to effectively sanction such manipulations when they arise, are of an essential nature.

The first reactions of sports institutions: an unequal involvement of sporting institutions often reacting instead of preventing

In 2013, SportAccord, in collaboration with the Sorbonne-ICSS Chair, sent its members – 91 international federations – a questionnaire concerning sports integrity. The answers obtained provide a good picture of the mechanisms, procedures and tools deployed by international sports federations to protect the integrity of their sport.

Taking some examples related to the classification of sports according to risks of manipulation, an analysis of the answers to the questionnaire allows a classification of the

federations into three groups (shown in fig 34):

- Group 1: sports federations whose competitions provide betting opportunities and who have already had to deal with cases of manipulation.
- Group 2: sports federations with few events providing betting opportunities and who have been only rarely confronted with manipulation cases.
- Group 3: sports federations whose competitions are not used as the basis of sports bets on internet sites and where the issue of the manipulation of events remains a secondary issue for various reasons (this does not mean, however that risks of manipulation do not exist, since every sporting event can potentially face such an issue).

With regard to the inclusion of sport integrity and competition manipulation in the statutes, objectives and regulations of international federations, the answers to the questionnaire showed that the federations directly concerned by the fixing of sporting events have reacted by adapting their regulations accordingly (cricket, football, tennis). Other federations that were not significantly affected by this plague can be commended for the quality of their official texts (rugby and archery).

Lastly, although the phenomenon of the manipulation

of sporting events linked to bets is still recent – this issue having been revealed between 2005 and 2008 – the lack of response of certain sports federations is surprising (see table below).

When it comes to procedures in cases of established or suspected violations of sports ethics (manipulation, sporting bets, doping, etc.), the answers to the questionnaire indicate that when a sport was genuinely confronted with cases of

manipulation or cases linked to sports integrity, it generally established a high-quality procedure. Cricket, football and tennis clearly fit within this framework. However, it should be noted that rugby, and to a lesser extent, basketball, which were not confronted with cases of manipulation on an important scale, have established good practices on the subject. This indicates, for cricket, football and tennis, a good level of cooperation with the national authorities tasked

Figure 35: The Inclusion of Sports Integrity and Competition Manipulation in the Statutes, Objectives and Regulations of International Federations

| Group 1: Significant or established risks of manipulation | Group 2: Low risks of manipulation | Group 3: Very low or absence of risks of manipulation |
|---|--|---|
| Level 1: established inclusion of integrity, detailed entries in official texts, with code of conduct for the various participants, explicit reference to sporting bets: <ul style="list-style-type: none"> • cricket • football • rugby • tennis | Level 1: established inclusion of integrity, detailed entries in official texts, with code of conduct for the various participants, explicit reference to sporting bets: <ul style="list-style-type: none"> • archery • darts • floorball • hockey | Level 1: explicit inclusion of sports ethics and manipulation in official texts: <ul style="list-style-type: none"> • Chess • Draughts |
| Level 2: established inclusion of integrity, entries in official texts, with code of conduct for certain participants: <ul style="list-style-type: none"> • baseball | Level 2: established inclusion of integrity, entries in official texts, with code of conduct for certain participants: <ul style="list-style-type: none"> • aquatics • netball • muaythai | Level 2: inclusion of sports ethics in official texts with adaptations for the specificities of each federation: <ul style="list-style-type: none"> • air sports • polo • sled dog sports • sport climbing |
| Level 3: partial inclusion of integrity, with general reference in official texts, ongoing improvements: <ul style="list-style-type: none"> • basketball | Level 3: partial inclusion of integrity, with general reference in official texts, ongoing improvements: <ul style="list-style-type: none"> • bobsleigh & tobogganing • cycling • gymnastics | Level 3: no mention of sports ethics in official texts <ul style="list-style-type: none"> • fistball • racquetball <p>Not adapted to the specificities of the sporting discipline:</p> <ul style="list-style-type: none"> • aikido |



with criminal proceedings linked to the manipulation of sports competitions.

For example, for 60% of sporting institutions surveyed in France (2011) said anti-doping efforts were more developed than efforts to combat corruption linked to sporting bets. The first explanation is temporal and comes from the fact that doping issues are older.

More generally, most sports organisations encountered in a project directed by IRIS for the European Commission consider that risks of manipulating a sports competition are still potential, or that such risks are extremely low. As is the case for doping, where cycling is the most talked about sport, corruption linked to betting activities seems – wrongly – only to affect football or cricket, and only in countries with high risks of corruption. Generally, it is only when a manipulation case is widely published that some mobilisation can be observed. Controlling risks in advance constitutes a vital target for improvement.

The figure below indicates the measures to be taken by sporting institutions by order of priority, according to the risks to which they are exposed. Priority 1 is that the adoption of the tool is a necessity, Priority 2 that it is advisable and Priority 3 of lesser importance. But all these measures remain a priority.

A beginning of convergence between sports institutions

Although the current study shows that each federation has its specific devices, the birth of a convergence trend can be observed.

Regarding soft law, a working group created by the IOC identified, on 2 November 2011, the five universal principles that should be included in a code of conduct whose adoption by all international sports federations is desirable. These principles, addressed to athletes, are the following:

- Know the rules of your own sport and of multi-sports events;
- Never bet on your sport or on any sport on a multi-sports event programme;

- Never fix a competition or part of it;
- Be careful with inside information, whether it relates to your sport or any other sport; never disclose such information;
- Report immediately any time that you are approached to fix a competition or part of it.

These principles can be found mainly, under a more or less developed form, in certain codes of conduct and model rules.

The five universal principles enumerated above already constitute a part of the *lex sportiva* (hard law) of several international federations alongside provisions relating to combating corruption. International federations are currently very active when it comes to corruption in sports, and in particular with regard to the manipulation of sports competitions linked to bets. It would also be desirable to standardise rules of conduct on the basis of the five universal principles and to clarify their legal regime.

An Unbalanced Fight between the Participants in the Manipulation of Sports Competitions and the Authorities Combating it

The structural weaknesses inherent to sports are exploited by criminal groups

Criminal groups have quickly managed to find the structural flaws of the sporting world:

- Late payments of salaries / structural deficits in certain clubs;
- Athletes living beyond their means;
- Struggling sports clubs accepting money from unknown sources;
- Shareholders/directors of sports organisations linked to crime taking advantage of the positive image of sport and its autonomy vis-à-vis States in order to commit certain criminal activities (false invoices, overcharging, laundering, false transfers, etc.).

Figure 36: Procedures in Cases of Established or Suspected Violations of Sports Ethics (Manipulation, Sports Betting, Doping, etc.)

| Group 1: Significant or established risks of manipulation | Group 2: Low risks of manipulation | Group 3: Very low or no risks of manipulation |
|---|--|--|
| Level 1: clear organisation with well structured procedures and identified contacts: <ul style="list-style-type: none"> • cricket, football, rugby, tennis | Level 1: clear organisation with well structured procedures and identified contacts: <ul style="list-style-type: none"> • archery, floorball | Level 1: clear organisation with well structured procedures and identified contacts: |
| Level 2: clear organisation with relatively well structured procedures and some identified contacts: <ul style="list-style-type: none"> • baseball • basketball | Level 2: clear organisation with relatively well structured procedures and some identified contacts: <ul style="list-style-type: none"> • aquatics • bobsleigh & tobogganing • cycling • darts • gymnastics • hockey • muaythai | Level 2: clear organisation with relatively well structured procedures and some identified contacts: |
| Level 3: no clear organisation | Level 3: no clear organisation: <ul style="list-style-type: none"> • netball | Level 3: no clear organisation or ill-adapted to the discipline: <ul style="list-style-type: none"> • aikido • air sports • chess • draughts • fistball • polo • racquetball • sledding sports • sport climbing |

The difficult detection of manipulations

There are three ways to identify possible manipulations of sports competitions:

- A real time monitoring of the sports betting market and the detection of irregular bets (by abnormal variations of odds or betting volumes);
- Intelligence actions undertaken by the competent State services whose goal is to understand, in order to better combat them, the behaviours of criminal organisations;

these organisations are sometimes linked to the sports betting sector and the sports sector (the Bochum case, for example);

- Intelligence actions undertaken by sports organisations (monitoring of competitions, official reports and communication of information originating from sports participants or their entourage who possess information concerning an approach or a sports fraud attempt.



Figure 37: Tools to be Adopted Depending on the Level of Risk to which Sports Institutions are Exposed

| Tools | Level of risk | | | |
|---|-----------------------|----------------------------------|------------------------|------------------------|
| | Highest level of risk | Fairly high level of risk | Moderate level of risk | Very low level of risk |
| Elected "Ethics/integrity" expert | Priority 1 | Priority 2 | Priority 3 | Priority 3 |
| Operational manager in charge of integrity | Priority 1 | Priority 1 | Priority 2 | Priority 3 |
| Unit dedicated to integrity | Priority 1 | Priority 2 (one person at least) | Priority 3 | Priority 3 |
| Integrity "awareness" for directors | Priority 1 | Priority 1 | Priority 2 | Priority 2 |
| Integrity "awareness" for athletes and officials | Priority 1 | Priority 1 | Priority 2 | Priority 2 (education) |
| Acquiring competencies with respect to sports bets | Priority 1 | Priority 2 | Priority 2 | Priority 3 |
| Acquiring knowledge concerning organised crime | Priority 1 | Priority 2 | Priority 3 | Priority 3 |
| Prohibiting participants from betting | Priority 1 | Priority 1 | Priority 1 | Priority 2 |
| Prohibiting the communication of sensitive information | Priority 1 | Priority 1 | Priority 2 | Priority 2 |
| Obligation to report any approach / corruption | Priority 1 | Priority 1 | Priority 1 | Priority 1 |
| Strong sanctions for cases of manipulation | Priority 1 | Priority 1 | Priority 1 | Priority 1 |
| Policy for choosing and monitoring referees | Priority 1 | Priority 2 | Priority 2 | Priority 3 |
| Controlling access to competitions and means of communication | Priority 1 | Priority 2 | Priority 3 | Priority 3 |
| Cooperating with the sports betting industry | Priority 1 | Priority 2 | Priority 3 | Priority 3 |
| Monitoring sports betting markets | Priority 2 | Priority 2 (only major events) | Priority 3 | Priority 3 |
| Intelligence and internal investigations unit | Priority 1 | Priority 3 | Priority 3 | Priority 3 |
| Anonymous and confidential reporting mechanism | Priority 2 | Priority 2 | Priority 3 | Priority 3 |

Each of these types of action collides with practical issues:

- Concerning the sports betting monitoring systems, there are two main difficulties; the first being linked to the fact that the most sophisticated alert systems (such as UEFA's BFDS) do not have access to the market volumes. Therefore, they can only rely on the analysis of odds variations, without knowing the identity of bettors, their geographical distribution or the amounts of wagers. In addition, criminal organisations know how these systems work and attempt to stay under the radar, preferring to spread their bets via multiple operators;
- Sports do not generally constitute a priority for intelligence services, who still have to become familiar with the subtleties of the internet and its capacity to encourage international flows;
- Lastly, although many mechanisms are being set up in order to effectively transmit information from "the field" (confidential phone number or electronic address, ombudsman, smartphone alert applications, etc.), sports participants still hesitate to provide information regarding an approach or a rumour of corruption; for multiple reasons: fear that the information will not be processed while respecting confidentiality, fear of being negatively judged for denouncing such acts, or simply

not being able to find a contract for having violated omerta (cf. Simone Farina).

An inadequate awareness of the dangers of certain bets

The dangers inherent to certain types or formulas of bets are emphasised by well identified factors:

- An offer of bets that keeps rising without limits;
- Few restrictions (exception: Australia, where live betting is prohibited; France and Germany who limit the authorised betting formulas; Finland, where daily wagers are limited; Canada, where simple bets are still prohibited, etc.);
- Difficulties for countries seeking to protect public order to deal with betting/tax havens;
- Certain operators in intense competition conditions can only resort to illegality or the extension of the offer in order to survive.



13.

WHICH INSTRUMENTS SHOULD BE
DEVELOPED AS A PRIORITY TO
PREVENT THE MANIPULATION OF
SPORTS COMPETITIONS?





13. WHICH INSTRUMENTS SHOULD BE DEVELOPED AS A PRIORITY TO PREVENT THE MANIPULATION OF SPORTS COMPETITIONS?

Developing Prevention, Information and Education Instruments: the First Priority

Among the instruments likely to decrease risks of manipulation of sporting events, the measures of prevention and information are undoubtedly vital. They are simple to put in place, efficient and directly operational. In fact, the risks that, for example, an “educated” athlete or referee will be involved in fixing a sporting event are greatly diminished. Prevention and education are therefore the principal tools that can produce results in the short term.

Increasingly diverse actions

Today, the range of preventative actions used by the various stakeholders is becoming more and more diverse. Although not exhaustive, the following classification allows a grouping of the various actions, sometime complementary, that can be taken:

- Organising and coordinating actions (unit dedicated to sport integrity, network of trainers, etc.);
- Adapting sports disciplinary procedures (models, conflict of interest rules, etc.) and codes of conduct;
- Informing sports leaders, public authorities and targeted individuals (for example, media outlets);
- In-depth training of trainers;
- Preventive actions destined for sports participants (face

to face, e-learning, interactive fora, using social networks, practical guides, etc.);

- Communicating with the broad public;
- Other actions (studying the behaviour of sports participants in connection with fixed matches, ombudsman, etc.).

In any case, it is interesting to determine the founding element which governs the establishment of preventive actions: anticipating risks, reaction times for concrete problems, improving image, seeking financial resources, etc.

Recent awareness and education programmes

The analysis conducted in the Report attempted to identify and analyse the known significant actions. Some sixty concrete actions were thus identified. Prevention and information campaigns are only a recent phenomenon. In fact, almost 60% of the actions identified were launched less than eighteen months ago and more than 75% of the actions were initiated less than three years ago. This can be explained by the fact that most of the large scandals were uncovered fairly recently. The trend is clear: most organisations develop programmes as a reaction to a widely publicised case and rarely as a preventive measure.

North America was the first continent to set up preventive and educational actions concerning sports integrity. However, since 2010, following repeated scandals, Europe established programmes on the manipulation of sports competitions and sports bets. More than 40% of these operations developed in Europe mainly concerned football, tennis, cricket and rugby. Unsurprisingly, football and the multisport and State organisations (IOC, SportAccord, Australian Government, National Olympic Committees, etc.) each represent one third of the preventive actions established for sport integrity.

The conditions for the success of preventive and educational actions

The optimisation of the preventive and educational actions linked to sport integrity requires the establishment, at least on the national level, of an effective cooperation between the public authorities, the sporting movement and betting operators. In addition, the sports leaders should be trained in a way that would allow them to anticipate risks linked to sports integrity.

In each sports organisation, a process of information communication on the subject of sports integrity should be put in place in a way as to reach all the stakeholders in the sport. These organisations should also identify the persons to train and adapt the contents of prevention programmes as well as the best means of communication.

A mechanism of evaluating the results obtained should be established in order to adapt the preventive programmes.

Lastly, the prevention actions undertaken as well as the results obtained should be made known to the public and to journalists. Actions involving fans and supporters should also be encouraged.

Improving the Governance of Sports Organisations: A Recently Identified Priority

Possible flaws in the governance of sports institutions could directly or indirectly increase their vulnerability to manipulations of sports competitions. Directly, by not

protecting them against risks of corrupting agents gaining a power of influence in some of their bodies of management or on some of their members. Indirectly, by preventing them from either initiating the fight against the manipulation of sports competitions, through a lack of sufficient reactivity for example, or from conducting an effective fight, because of a lack of legitimacy for example.

An analysis of risks linked to the governance of sports organisations that are likely to affect sports integrity allowed the identification of the following risk factors:

- Control of the organisation by organised crime;
- Financial difficulties of the organisation;
- Denying a situation or fear for the organisation's image in the event of a scandal;
- Lack of interest in sports integrity issues;
- Operational difficulties in the management of integrity issues (including a lack of responsiveness);
- Favours short-term objectives to the long-term interests of the organisation;
- Isolation of the sports organisation from the public authorities (thus inducing a risk of insufficient reaction);
- Dilution of responsibilities between the stakeholders of a given sport on the subject of integrity (causing a risk of inadequate reaction).

As is the case with public authorities and other private organisations, sporting institutions are currently confronted with a requirement of good governance that is based on three pillars: responsibility, transparency and participation. These principles develop into a series of more concrete requirements (legitimacy of the organisation's managers, the development of a strategic perspective, taking into account the views of all the members of the institutions as well as external stakeholders, the existence of appeal mechanisms, transparency of the decision making process, the responsibility of decision makers, combating corruption and conflicts of interests, complying with the fundamental rights and economic liberties of private persons etc).

Certain specificities of the sporting movement have a direct



impact on its governance. The main sporting institutions are at the same time regulators and principal economic agents on the market. They are generally concerned with adopting norms and decisions that contribute to the regulation of their sport and also to the advancement of their own economic and commercial interests. In addition, sports organisations have very different objectives and yield very different figures (financial results, number of licensees, sporting results, etc.).

Several studies have already underlined the flaws in the governance of sports institutions in general or of one or another of these institutions. Their functioning – this discussion will be limited to the aspects that could hinder the fight against the manipulation of sports competitions – sometimes shows deadlock situations, a lack of responsiveness, transparency and a certain paralysis in the decision-making process.

Whether spontaneously or through external pressure, certain sporting institutions have showed their will to adapt their systems of governance to the evolution of their functions and to the requirements of the public opinion and public authorities. These initiatives span from the adoption, in 2008, of the Basic Universal Principles of Good Governance of the Olympic and Sports Movement by the IOC, to UEFA's rules on financial fair play that were enacted on 1 June 2012 for example. The first instrument illustrates the type of rules of governance that can indirectly contribute to the fight against the manipulation of sports competitions: the targeted measures can only produce their effects if they are coupled with sound institutional structures. The second instrument shows measures of good governance aimed at neutralising a precise factor capable of encouraging the manipulation of sports competitions. The rules on financial fair play are designed to avoid late payments of salaries by clubs to their players, which contributes to preventing a major risk of fraud.

On the basis of the analyses found in the Report and the recommendations given (for example, in resolution 1875 (2012) adopted on 15 April 2012 by the Parliamentary Assembly of the Council of Europe), several measures that

should allow the anticipation of the risks mentioned supra can be suggested:

- The integrity of sporting directors should be guaranteed: the competence of sports institutions in the field of ethics can be optimised or weakened through the election procedure and the functioning of the decision-making bodies;
- The managing bodies of a sport organisation should adopt a proactive and preventative strategy instead of a reactive one;
- The financial risks of sporting structures that can be required to remunerate athletes should be managed;
- The operations of the managing bodies of sporting federations and leagues should be adapted to sports integrity;
- For each sports organisation, a classification of risks - primarily integrity risks - should be established, with a long term perspective accompanied by a procedure for managing incidents;
- For each sports organisation, the establishment of an integrity committee endowed with real powers should be mandatory;
- Integrity should be included in the statutes and regulations of national and international sporting federations and leagues.

The following general observations can also be made:

- The reliability of the analysis or of the legal advice sought before making policy decisions is crucial for the effectiveness and the legitimacy of the prevention and repression devices to be used; the under-estimation of certain legal constraints can expose sports institutions to unexpected disputes; their over-estimation can, on the contrary, paralyse the institution;
- In order to be able to adequately fulfil their objectives, sporting institutions should specifically determine, for each issue, whom/what to take into account and to whom and on what they should report: since the manipulation of sports competitions affects third parties,

sporting institutions certainly have an obligation to provide accounts of the situation and of their reactions to the public authorities (or even to other stakeholders);

- Sharing best practices and resorting to outside expertise (that could lead to a ranking) or to peer review mechanisms could sustain the will of the sports institutions to renew their governance and encourage a sound emulation between them.

Good governance does not constitute, for sports institutions, a trend they are destined to follow. It is a critical issue: the quality of cooperation with public authorities, in particular in terms of information sharing will depend on the quality of institutional governance (infra).

Developing Regulation Instruments Applicable to Sports Betting Operators: Fighting Against Illegal and Irregular Bets, Restrictions Imposed on Betting Operators, Self-Regulation of Operators

The risks posed by the exponential development of sports bets to the integrity of sport by encouraging the manipulation of sports competitions renders the development of effective regulation of bets all the more urgent. In fact, managing a manipulation becomes more delicate or inoperative in a given territory when certain restrictions are imposed on sporting bets (for example, by making it impossible to bet on in-game events that can easily be influenced) or when a regulator strictly monitors the operators to whom a licence was granted.

The range of public policies regarding illegal bets

The public policies concerning sporting bets, the instruments necessary for combating illegal bets as well as the restrictions imposed on the offer of sporting bets and the monitoring of betting operators can be divided into two large categories:

- For certain countries, sports bets – and more generally online games – are considered as a bonanza that creates jobs and significantly increases public revenue; the

Cagayan province in the Philippines, Gibraltar and Malta, for example, fall within this category;

- For other jurisdictions, sports bets constitute public and social risks that should be strictly managed; China, the United States and Switzerland are such examples.

To these two categories can be added a third: States where sports bets are considered as a socially accepted practice that should nonetheless be regulated.

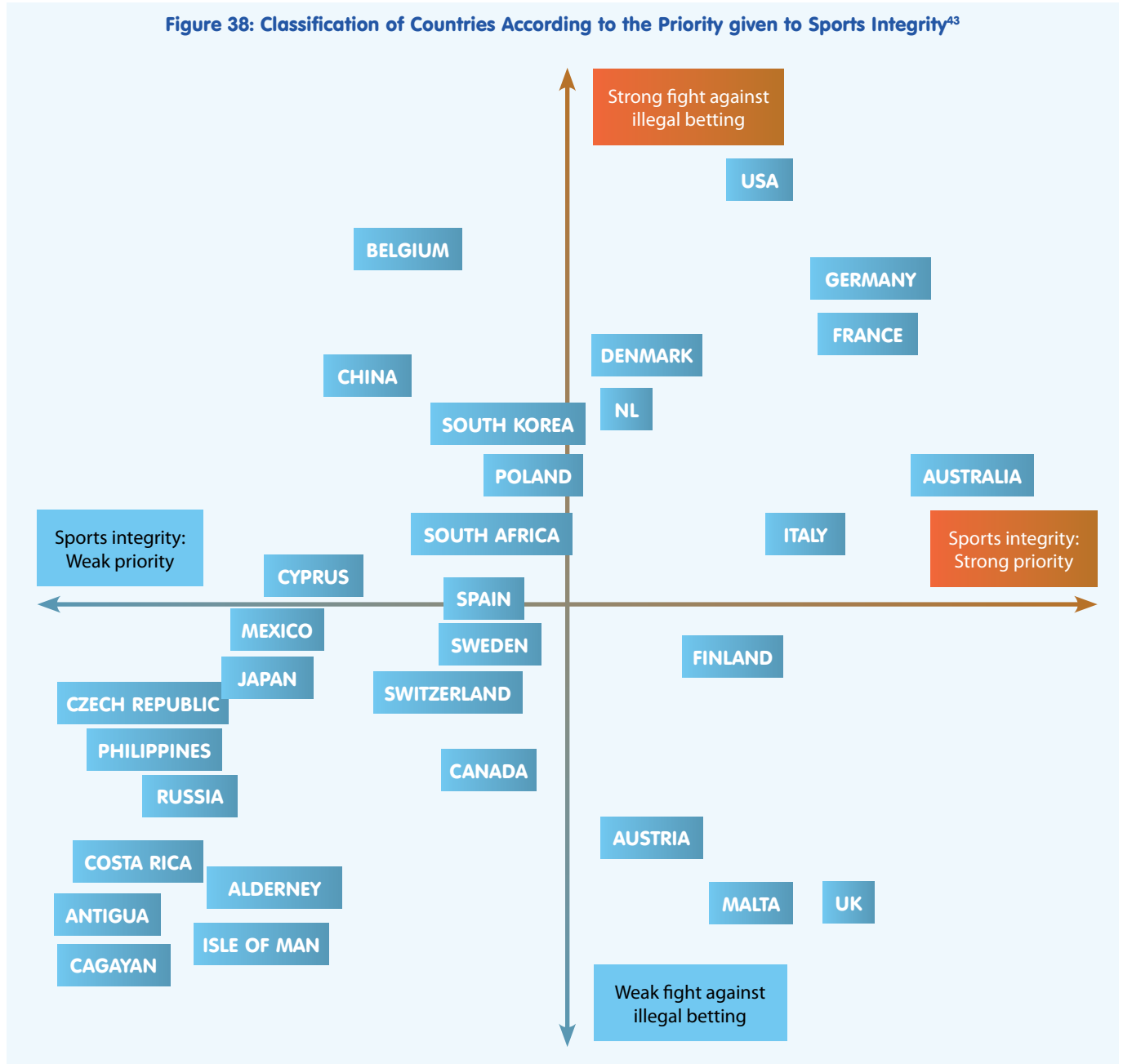
Beyond their will to combat illegal bets, it seems interesting to classify countries according to the priority given to sports integrity (laws providing for punishments for the offence of sports fraud, prohibition of participants from betting on the sporting events they are taking part in, restrictions on sports bets: types of bets authorised, imposing limits on rates of return as well as bets, exchanges between betting operators and the sporting movement, financial contribution of betting operators for the protection of sport integrity, etc.).

Beyond certain national nuances (see figure 38), the specificities of the types identified above are globally respected:

- Apart from the United Kingdom, the countries in group 1 (block south-east) did not take account of the risks linked to sport integrity;
- Countries in group 2 (block north-east) have strict regulations concerning sports bets. They are also those that protect sport integrity in the most effective manner (Australia is an example of a pioneer country in a number of issues);
- Countries in group 3 (block north-west) generally combat illegal bets and attempt to preserve sports in their country;
- Most countries in group 4 (block south-west) have not taken account of the dangers posed by illegal bets, or by risks affecting sports.



Figure 38: Classification of Countries According to the Priority given to Sports Integrity⁴³



43. Source: The Sorbonne-ICSS Chair.

Establishment, powers and means of regulation authorities of sports bets

Beyond the essential need for creating regulatory authorities dedicated to the regulation of sports bets, a survey of the powers and means given to the regulators that proved to be effective was made. Among them can be found:

- Injunctions addressed to illegal sites;
- Drawing up a black list of illegal operators;
- Blocking illegal sites (via IAPs);
- Blocking the payment of winnings made through an illegal provider;
- Prohibiting advertising of and by illegal operators;
- The principle of mutual exclusion: the public authorities in charge of regulating bets can decide not to grant a national licence to an operator that does not comply with the rules established in another State; they can also decide to revoke an operator's licence if the operator commits illegal acts in another country;
- Establishing an offence for illegal bets: in this case, betting on an illegal website is criminally reprehensible; therefore, the individual is responsible for identifying legal/illegal website and not betting on an illegal website;
- Search engines in the fight against illegal bets.

In terms of best practices in the field of combating illegal bets, Belgium, Israel and the United States are among the best examples. Although the mechanisms put in place in these countries proved to be efficient, the recent case law of the Court of Justice of the European Union (CJEU) on the limitations concerning the requirements of the Member States regarding IAPs (Internet Access Providers) should be kept in mind. The advantages granted by the Court to the IAPs through these two decisions, could in fact restrict the possibility of blocking procedures favoured by the public authorities.⁴⁴

All the other countries mentioned in the summary table below (Figure 39) obtained tangible results. These examples show that repressive measures and potential sanctions strongly limit the number of illegal bets. This affirmation is valid regardless of the regulation model used (prohibition: USA; monopoly: Israel; licences: Norway). This conclusion is important because it clearly allows an opposition to the arguments always used by illegal operators. These operators maintain that since no blocking measure fully works, States should accept all operators that are granted a licence "somewhere" (even in a tax or betting haven).

Indeed, no technical measure can completely eradicate illegal operators, especially since some of them always find

44. Cases C-70/10, 24 November 2011 and C-360/10, 16 February 2012. In the first case, the CJEU held that a member State could not order an internet access provider to establish a filtering system of all electronic communications, applied indiscriminately to all its clients, as a preventive measures and at its own expense, without a time limitation, to prevent violations of an intellectual property right. The second case of 16 February 2012 confirmed the decision of 24 November 2011.



Figure 39: Measures for Combating Illegal Bets per Country

| Measures for combating illegal bets | Blocking sites | Blocking winnings | Prohibition of advertisements | Illegal betting offences | Principle of illegality |
|-------------------------------------|---|-------------------|--|--------------------------|---------------------------------|
| Belgium | YES (possibility of criminal sanctions for IAPs ⁴⁵) | In development | YES (possibility of criminal sanction) | YES | NO |
| Cyprus | YES | In development | YES (never used) | NO | NO |
| Denmark | YES | YES (never used) | YES | NO | NO |
| Estonia | YES | NO | YES | NO | NO |
| France | YES | YES (never used) | YES | NO | NO |
| Greece | YES | YES (Never used) | YES | NO | NO |
| Israel | YES | YES | YES | NO | NO |
| Italy | YES | NO | NO | YES | NO |
| Norway | NO | YES | YES | NO | NO |
| Netherlands | NO | YES | YES | NO | NO |
| Poland | NO | YES | YES | NO | YES |
| USA | NO | YES | YES | NO | Indirectly (Nevada, New Jersey) |

more creative ways to circumvent measures that can affect them.

The example of bwin.party is interesting. This operator, illegal in many markets, uses the services of a third party to manage client accounts (WorldPay Ltd.). In this example, a client who has a subscription with bwin.party logs in and wagers on the WorldPay website, that is also considered an illegal site. WorldPay, an electronic payment service corporation based in London then bets on bwin.party's website. Without the intermediary this would not be possible for the real client. This case demonstrates the importance of American laws which require that financial institutions and electronic transaction providers to make every effort to put an end to these circumventions by operators. Figure 40 explains this situation.

In conclusion, it is recommended to States truly

wishing to combat illegal online games that they adopt legislation allowing them to put in place an array of technical measures. Taken separately, each of them will lead to more or less tangible results. Together, they will produce a successful decrease (95% success is a realistic objective) of the illegal market share. In fact, for illegal operators wishing to keep violating national laws, the road will necessarily present more obstacles and will be more costly (and thus less attractive), and will present a higher level of legal risk.

The recommendations that seem, to date, to have produced the most significant effects are, by order of priority, as follows:

- The principle of mutual exclusion (a sports betting regulator can decide to grant a licence only to operators that are not listed on the blacklist of any countries with

45. Internet Access Providers

46. Source: The Sorbonne-ICSS Chair.

- which the regulator signed an agreement);
- Blocking payments through an indirect approach as is done in the USA (the responsibility for results is thus transferred to the financial and other related institutions);
 - Establishing a blacklist (not public) of illegal operators and blocking their websites;
 - Prohibiting the advertisements of illegal operators, subject to heavy fines for media outlets accepting to sell their advertising space to these operators.

Improving Tools Adopted Through the Initiative of Betting Operators and Sports Institutions

Certain EL (European Lotteries) lotteries created, since 1999, a sports bets monitoring system capable of detecting certain irregularities on the market. Their example was followed, some years later (2005) by ESSA (association of private operators), which developed a similar system and concluded several agreements with sporting federations, in a way as to generate alerts in cases of suspected manipulation. These monitoring tools need to be perfected.

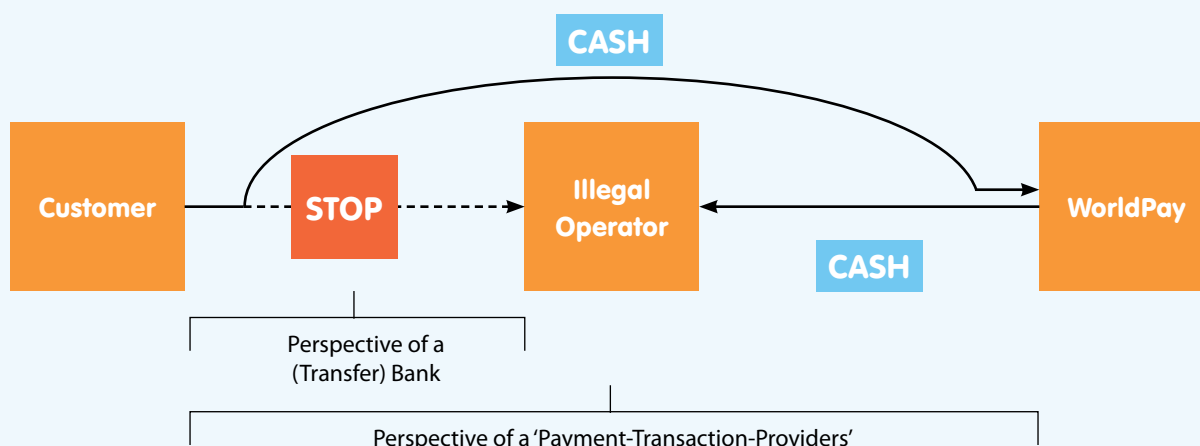
When issues linked to the manipulation of sports competitions became a major subject for the future of

sport, the two groups of operators (lotteries on the one hand, bookmakers and pure players on the other) each developed codes of conduct aimed at controlling the risks of manipulation linked to sporting bets. The lotteries' codes of conduct aim, in particular, at defending a regulated gaming model, where betting formulas should remain reasonable and are destined to bettors who wager on a casual basis. They also explicitly stress the necessity to take firm actions to combat illegal bets. For the members of ESSA, EGBA or RGA (associations of private operators), who sometimes operate without authorisation in the jurisdiction of the consumer where they sell their products, the first concern is protecting the consumer from risks of fraud and creating monitoring and internal control tools.

Expertise is also crucial. Therefore, betting operators must cooperate with sports entities in order to train their members and inform them.

Lastly, for the sake of prudence, it would not be wise to bring sports entities, betting operators and regulating authorities together to draw up a list of authorised and unauthorised bets. Although it is still too early to know whether risks linked to sports fraud will be reduced on the

Figure 40: How Illegal Operators can Circumvent Measures for Combating Illegal Bets





national level, certain countries, like Australia and France, have already started down this road.

Therefore:

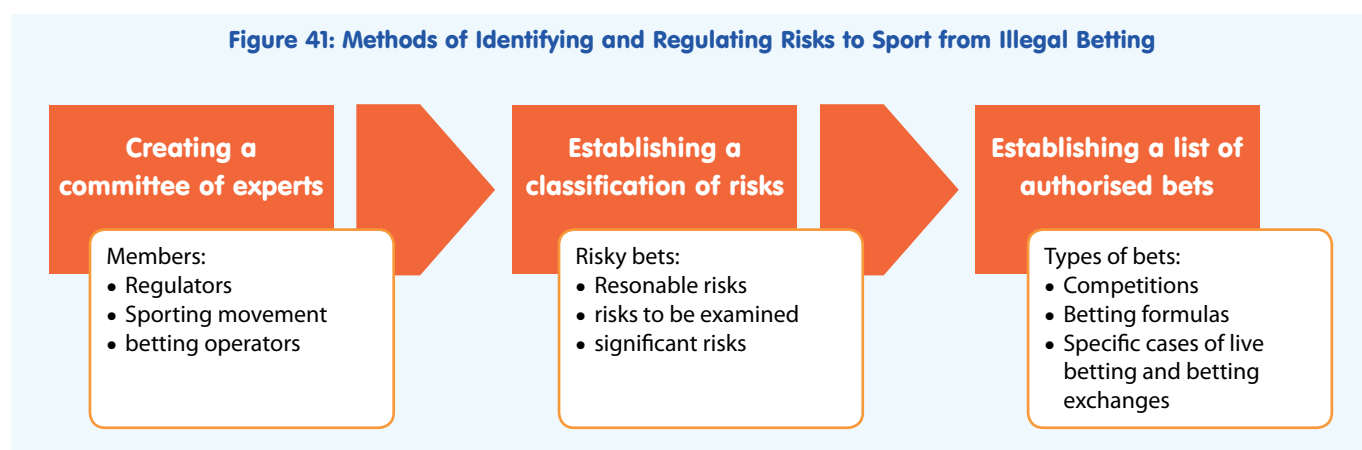
Concerning the monitoring of sporting bets, an alert standard with an obligation of vigilance for operators should be determined (operators should automatically communicate an alert to the sports organisation as soon as the indicator turns red: volume of bets above x%, abnormal geographical distribution, a suspicious variation of odds, etc.):

Concerning the use of the expertise of betting operators, it is essential that the sports movement identify risks linked to sports bets; therefore, operators should

undertake to inform and educate sports leadership and provide them with certain elements as is done under Australian or French law, where conditions of cooperation are created;

Concerning the identification of risks linked to sports bets, the following method should be adopted: while taking into account the specificities of each sporting discipline, a committee of experts should establish each year a list of authorised (or prohibited) bets. This committee can be administered, for example, by the IOC, the Council of Europe (EPAS), or the UN (e.g. UNESCO); the list would be thereafter transmitted to all national betting regulators and all betting operators.

Figure 41: Methods of Identifying and Regulating Risks to Sport from Illegal Betting



14.

WHAT ARE THE PRIORITIES FOR THE
DEVELOPMENT OF REPRESSIVE
INSTRUMENTS OF MANIPULATION
OF SPORTS COMPETITIONS?





14. WHAT ARE THE PRIORITIES FOR THE DEVELOPMENT OF REPRESSIVE INSTRUMENTS OF MANIPULATION OF SPORTS COMPETITIONS?

How should Repression be Undertaken by the Disciplinary Bodies of the Sports Movement?

There is no doubt that the sports movement has at its disposal a group of institutions and norms that form its disciplinary law which can be mobilised to fight against the manipulation of sports competitions or some of its protagonists. Therefore, the enforcement of disciplinary repression is subject to judicial constraints, which are in part endogenous and in part exogenous.

The Disciplinary Power of Sports Institutions, an Asset in the Fight Against The Manipulation of Sports Competitions

In general, disciplinary law is used to maintain and if applicable to re-establish order within a certain institution (public or private): it aims at the repression of offences attributable to a person under the authority of the organisation. This authority has equally a preventive and deterrent impact as the fear of sanctions motivates the potential recipients to act the way they should.

The disciplinary authority of sports institutions exactly matches this logic but presents two specificities. On the one hand, disciplinary law stems from the regulatory power and jurisdiction of sports federations and represents a very powerful authority relationship within the institution

with regard to athletes. On the other hand, in order to maintain their autonomy and avoid intervention from state authorities, sports organisations prefer to settle, litigations arising in the context of their activities on their own. They are also tempted to consider disciplinary procedures in preference or exclusivity to any other procedure.

Lastly, the practice of disciplinary power is subject to very strong constraints but is sometimes out of view. In fact, as a general principle, litigation cannot escape the control of ordinary state tribunals unless it can be submitted to another independent and impartial tribunal, which implies that the facts could be deferred to a jurisdiction that meets the conditions imposed by arbitral tribunals (for example the CAS); the procedure in its entirety should respect the general principles of law.

Subject to this condition, decisions taken by internal bodies are valid and could be implemented when they become definitive. Judicial mechanisms would see their outcome recognised by state judicial bodies and in this case within an international federation.

Provided that it is exercised in line with legal constraints, the disciplinary power of sports institutions constitutes a quickly mobilisable and efficient execution tool of repression for the manipulation of sports competitions.

The Protection of the Integrity of Sports Competitions, General Objective of Disciplinary Measures

The applicable rules in the context of the manipulation of sports competitions trace their roots to a plurality of texts such as federation statutes, ethical codes, disciplinary codes, codes of conduct, anti-corruption specific regulations or other instruments of a more or less similar nature. Several types of provisions exist in practice. They could make explicit reference to such practices or tackle more general violations of the integrity of sports competitions. Contracts of players or other employees of sports organisations could also include rules of conduct, which, if violated, could lead to the termination of the contract.

In general, it is accepted that disciplinary law - the law governing associations of a private nature - is interpreted in reference to sports objectives, namely the necessity for the integrity of competitions provided that strict legal interpretations or techniques do not represent an obstacle to the legitimate pursuit of these objectives.

The Cumulative Effect of Disciplinary Repression and Criminal Repression in the Case of the Manipulation of Sports Competition and How to Increase Efficiency

The disciplinary repression of the manipulation of sports competitions is not always sufficient on its own. In fact, cases of the manipulation of sports competitions could, owing to their dimension and the identities of their protagonists, partially escape the disciplinary jurisdiction of sports institutions. More probably, disciplinary and criminal repression should at least in certain cases (see classification *supra*) be regarded as complementary.

Criminal repression and disciplinary repression do not have the same objective

While the first takes into consideration the general interests and morals of society, the second only takes into consideration the interest of the concerned group with the

aim of preserving conduct standards within the group in its own interest and that of the public.

Criminal and disciplinary offences do not necessarily concur

If generally, criminal misconduct by an athlete in the context of a competition constitutes disciplinary violations, the opposite is not always true: In many cases, a violation that should be subject to disciplinary sanctions does not represent a criminal offence. Therefore, it is logical that disciplinary actions are treated independently from criminal actions. In the case of concurrent disciplinary and criminal offences, criminal authorities and disciplinary bodies can in principle investigate the same cases at the same time but their decisions may however differ.

Criminal and disciplinary law do not have the same scope of application *ratione personae*

Disciplinary sanctions could be applied only if the perpetrator belongs to the considered group or maintains a relationship with it while criminal sanctions can be imposed on any individual who has committed a criminal offence regardless of any precondition. However, in cases of the manipulation of sports competitions, it is not uncommon for a third party other than the sports institution to be involved while disciplinary law cannot apply to persons who, without being themselves members of a sports organisation or involved in such an organisation in any manner whatsoever, manipulate sports competitions by resorting to contacts in sports bodies without being themselves part of the sports jurisdiction in that sense. Therefore, the exercise of disciplinary powers by sports institutions can have a limited impact in the case of the manipulation of competitions insofar as some actors who participate in acts of fraud, and who may even be at their root, escape sport's justice.

Disciplinary repression and criminal repression are not subject to the same judicial system

Thus, the rule "*nulla poena sine lege*", which prohibits the



enforcement of sanctions not explicitly provided for in texts, applies strictly to criminal law, while the disciplinary system sometimes leaves to decision-making bodies certain freedom as to the nature and extent of sanctions that can be imposed. The rule “*nullum crimen sine lege*”, which in criminal law prohibits punishment for offences not precisely defined in texts, does not necessarily apply to disciplinary law: any violations of obligations, duties and the code of conduct as well as the sport’s moral and ethical values may in principle constitute a disciplinary offence and, in any event, the disciplinary rules may comprise an extremely wide array of sanctionable violations, which would be unacceptable in criminal law.

The procedures governing the gathering of evidence are not identical

For example, evidence that may be admissible in disciplinary proceedings might not be admissible in criminal proceedings.

The standard of proof applied in disciplinary law may be different and less stringent than that required by criminal courts (see below).

For all these reasons, the disciplinary repression of manipulations of sports competition is both smoother than criminal repression and at the same time, insufficient in cases of involvement of a third party, and ineffective against systemic corruption which requires heavier means of repression.

Adaptations of disciplinary law required to fight against the manipulation of sports competitions

Unification or harmonisation of disciplinary rules related to the manipulation of sports competitions

To enhance the effectiveness and consistency of the fight against the manipulation of sports competitions, uniform regulations (strictly identical for all sports federations) should be considered or at least harmonised (i.e. comprising the same elements, or at least a minimum number of common elements while leaving to the federations the task

of formulating them). Such a solution would also ensure better legal certainty.

Currently, model rules have been proposed by sports organisations that comprise international federations (SportAccord and the Association of Summer Olympic International Federations [ASOIF]) and, furthermore, international federations may issue binding rules for their affiliated federations which apply directly or indirectly (mandatory integration of international rules into their own regulations). One could imagine, going further if an organisation like the IOC were to impose rules regarding the manipulation of sports competitions on all international federations that it recognises as a condition for acknowledgement and thus the right to exercise specific rights.

Other processes are also possible in order to attain unification – or at least a wide harmonisation – of the regulations governing the various forms of manipulation of sports competitions. This could be achieved by the adherence of sports institutions to an instrument summarising their obligations in the exercise of their disciplinary powers and the main provisions that they must adopt or by the adoption of a unified code to be developed and adopted through broad cooperation between state institutions and/or international federations and associations to which they belong and organisations that aim to promote the integrity of the sport.

Whichever path is taken, harmonisation should in any case cover the rules of conduct of competition participants subject to disciplinary law. Given that the CAS exercises a federal function, harmonisation is less necessary with regard to disciplinary bodies of different federations, sanctions and rules of procedure.

Limited extension of the scope of application of disciplinary law

In general, disciplinary law primarily targets behaviour in direct relation with sports competitions.

However, in addition to the manipulation of competitions,

disciplinary law should be extended to cover a wider field including conduct indirectly related to competitions (example: establishing contacts with the aim of fixing matches, bets on a competition), as well as other behaviour (example: advertising for a sports betting company, holding shares in such a company).

Disciplinary law can only apply to natural and legal persons subject to either the sports jurisdiction or the jurisdiction of a sports institution. In order to establish this jurisdiction, there must be a legal relationship of some kind between the natural or legal person and the sports organisation enjoying disciplinary authority. The judicial relationship may result from the internal rules of the sport organisation which stipulate that all members and its own members in this case are accountable for their disciplinary offences. The legal relationship may also result from a contract between the sports organisation and the concerned person and if the internal rules support it, from the fact of mere participation in a sports event (factual legal relationship). Finally, sanctions against these persons presume the existence of a more formal relationship between them and the organisation, for example such as authorisation to access non-public areas during competitions.

Thus, the extension of the scope of application *ratione personae* of disciplinary law is possible, but in any case limited. It cannot embrace all the persons who may be involved in the manipulation of sports competition.

Definition of the rules of behaviour: favouring the general over the particular

By standards of conduct, one means statutory and regulatory rules that are enacted by sports organisations and stipulate that persons subject to their jurisdiction have the duty to act or refrain from certain behaviour under the penalty of disciplinary sanctions.

Many regulations include very general provisions, designed to avoid gaps in repression by criminalising all forms of behaviour that is harmful to sport, without providing any further detail (catch-all rules). For example,

many regulations include provisions that punish active and passive corruption in a fairly general sense. These general rules are sometimes associated with specific standards illustrating the point but without purporting to be exhaustive. The diversity of unacceptable moral and ethical behaviour leads to an inability to define them by precise rules. Thus, inserting broad rules in the regulatory provisions is the only way to mount an effective fight against the manipulation of sports competitions.

The definition of certain specific behaviours constituting an offence because they may favour the manipulation of sports competitions are referred to in the classification contained in the report. Besides manipulation as defined in generic terms, prohibited behaviour should notably include the following actions:

- To bet on all competitions of the concerned sport (including the action of asking a third party to bet on their behalf), a fortiori competitions in which the players participate;
- To directly or indirectly participate in any form of activity of a sports bookmaker;
- To directly or indirectly promote any form of sports betting;
- To reveal inside information, which requires the following clarifications:
 - ◆ Favour a broad definition of inside information (information unknown by the general public, information acquired by the author by virtue of its function in sport and which are not intended for publication due to its nature);
 - ◆ Prohibit the disclosure of this information to third parties;
 - ◆ Prohibit the use of this information, particularly with respect to bets;
 - ◆ Provide for a discretionary clause allowing disciplinary bodies to renounce prosecution and punishment of such disclosure if it turns out, given the circumstances, not likely to cause any risk to the integrity of competitions;
- To disregard the obligation to report approaches, which



requires the following details:

- ◆ When a person reports facts to the competent body, he or she becomes bound to report new facts that might come to his knowledge later or arise thereafter;
- ◆ Any abstract suspicion does not entail the obligation to report, such an obligation can only be imposed in the presence of concrete elements which might indicate that a third party is attempting to corrupt the individual concerned;
- ◆ The recipient of information must be clearly identified;
- ◆ The obligation to report should be performed as soon as possible in order to suppress any manipulation attempt;
- To disregard the obligation to report facts (the need to know when it becomes an obligation to report facts is also the subject of this hypothesis);
- To disregard the obligation to cooperate with investigations:
 - ◆ In contrast to the criminal procedure, the disciplinary procedure does not grant the targeted person the right to remain silent and withhold elements that might be used against him (the right not to incriminate oneself);
 - ◆ Despite being important to effectively fight fraud in sports, the obligation to cooperate should not be used by the bodies of association as a pretext to compel concerned individuals to provide information unrelated to the case or facts that need to be proved or are totally disproportionate to the objective being pursued and the importance of the case;
 - ◆ Sports organisations should rigorously outline information to be disclosed in the context of the obligation to cooperate.

Whether it is related to behaviour involving corruption on a large scale or specific behaviour, any form of participation (instigation, aiding, joint action) should also be reprimanded.

One must not forget that there is a fine line between what is considered tactical (non-punishable in principle) and what is considered as corruption in the broad sense (which should

result in disciplinary consequences). For example, should all cases where an athlete fails to undertake necessary efforts or in which a team wilfully fields a weakened formation be subject to disciplinary sanctions? Rather than seek to distinguish between these situations, it seems preferable to leave to disciplinary bodies an important discretionary margin to assess the inherent parameters in the concerned sport.

Finally, assuming that the fate or the position of a participant in a competition depends on the victory of another participant against a third party (the assumption of incentives), the situation should be evaluated differently: is it wrong that team A offers a reward to team B (or the coach or a player of the team) in case they win against a third team (team C)? If so, sports organisations should rely on their “catch-all” provisions or rules that prohibit rewards and promises of reward to penalize such behaviour.

The Adoption of Disciplinary Sanctions: Strictness in the Case of the Manipulation of Sports Competitions

For sports organisations and with respect to their members, disciplinary sanctions are of greater importance than criminal sanctions. In fact, in the eyes of sports organisations, it is essential particularly in the field of manipulation of sports competitions to exclude individuals who are likely to harm the system. Criminal sanctions, however, are not intended to prevent concerned individuals from taking part in sports activities in a particular discipline irrespective of the nature of these activities even though a criminal sanction such as imprisonment can result in such a consequence.

In principle, sports organisations are free to define in their by-laws and regulations the type of sanctions that they can impose on persons subject to their jurisdiction. For natural persons, sanctions range from a warning to suspension for a fixed period or for life, passing notably by a fine. As for legal persons, regulations may lead, for example, to the exclusion of a club from the federation while stricter sanctions may entail the exclusion of the club from current or future competitions (sanctions suitable to

violations such as the manipulation of sports competitions), or a fine and the confiscation of revenue resulting from participation in a competition. Sanctions may be subject to total or partial suspension under certain conditions (e.g. suspension of sanctions on condition of participation in anti-corruption programmes). In cases of sports fraud, the fine is generally imposed in addition to other sanctions, notably a suspension.

The insertion of a clause in the statutory or regulatory provisions that allows the disciplinary sanctioning of a targeted person even after he loses membership would guarantee greater efficiency.

More innovative sanctions also exist as sports organisations may decide to confiscate or forfeit benefits owed to natural or legal persons in line with the sum of money that was used to commit the offence. One could also imagine that clubs can compel their players and other employees to sign a work contract that could be terminated with immediate effect in case of a violation of the regulations concerning the manipulation of results and betting.

Within the framework established, disciplinary bodies decide on the most appropriate sanction subject to their discretion in each case. As in criminal law, the determination of sanctions in each particular case must take into account equally the general prevention goals or the deterrence effect of sanctions on third parties and the objectives of special prevention or the effect of the sanction on the person who is subject to it (punitive effect and prevention of offence repetition). Furthermore, in disciplinary matters, sanctions should allow the sports organisation which imposes them to maintain or restore order within their ranks and to preserve or clear their image vis-à-vis third parties such as sponsors or other contractual partners (e.g. broadcasters of television programmes), fans and the public in general.

The majority of sports organisations have refused to set the benchmarks for sanctions against various offences in terms of the manipulation of sports competitions. Under the current state of law and despite some isolated judicial

decisions, it should be considered that they may impose minimal or/and maximal sanctions for certain forms of offences or impose suspensions — or an equivalent sanction — for life in some particular cases. Disciplinary bodies must then commit to an established framework.

The principle of “zero tolerance” seems to guide sports disciplinary bodies. However, it does not imply that all offences should be punished by the maximum penalty but it suggests that disciplinary bodies cannot show weakness when facing a significant threat to sports.

However, sports associations are not exempt from the obligation to respect the general principles of law. In particular, sanctions must not be in conflict with public order. They must take into account the liberties of targeted individuals such as the right to competition or economic freedom when it comes to the suspension of athletes who practice sport as a profession (suspension equivalent to an occupational ban). Overall, they must respect the principle of proportionality, in the sense that, in each case, sanctions must be proportionate to the required goal, the circumstances of the case and the personal circumstances of the concerned person. However, these principles do not prevent the enforcement of onerous sanctions in the event of serious disciplinary offences.

Practice shows that disciplinary sanctions against referees and players who manipulate competitions are usually onerous, and even very onerous. In many cases, a suspension or expulsion for life has been imposed. On one hand, this is attributed to the need to exclude people who do extreme harm to sports and secondly to deter those who might be tempted to commit fraud.

It would be desirable that sports organisations and arbitral tribunals publish not only their decisions but also report on the imposed sanctions concerning match fixing so as to enhance the dissuasive effect of sanctions and to facilitate harmonisation of practices. Arbitral tribunals should also further emphasise the motives behind their decisions in order not to give the impression of systematically inflicting onerous sanctions.



The Disciplinary Procedure: A Procedural Framework Sufficiently Flexible to Outwit Cunning Manipulators of Sports Competitions

The great freedom enjoyed by sports institutions and the disciplinary bodies within them

In principle, sports institutions have considerable freedom to institute, organise and establish their disciplinary bodies and can adjust at their discretion the applicable procedure to their disciplinary bodies. This freedom is in fact only limited by the parties' right to a fair trial that notably respects the right to be heard and its corollaries, in particular the right to a procedure governed by a reasonable time limit, the right to be informed of the charges, the right to be assisted by legal counsel, the right to inspect the file, the right to propose the administration of relevant evidence, the right to present its position in writing or in a hearing and the right to receive a reasoned decision.

Disciplinary bodies have also considerable latitude in the manner of conducting individual procedures. Indeed, most of the time, regulations do not go into detail in terms of the different stages of the procedure and thus leave a margin of appreciation.

The need for an incentive to reveal facts

One of the main challenges facing efforts to fight fraud in sports is that persons who are approached by a third party seeking to manipulate competitions as well as those aware of corruption facts do not in general expose the protagonists of these plans and respectively these acts of their own volition. In addition, persons who are guilty of committing violations obviously tend not to disclose these offences since they are aware of the onerous disciplinary sanctions.

Some regulatory mechanisms encourage the reporting of approaches and other facts related to the manipulation of sports competitions. Such mechanisms consist mainly of an obligation to report and denounce, a mechanism for alerting ('whistleblowing'), the attenuation or waiver of sanctions in case of cooperation and systems allowing for negotiated sanctions ('plea bargaining') and for amnesty.

The latter case, however, should be considered as a last resort, when other measures, more in line with ethics, do not result in the desired effect or if the situation is such that immediate action is required.

The need in certain cases for provisional measures

When reasonable suspicions are held against a person subject to the disciplinary jurisdiction for acts of manipulation of sports competitions, it may be necessary that the competent bodies of the concerned sports institution decide on provisional measures, in particular the temporary suspension of the targeted person throughout the course of the proceedings in order to preserve the integrity of competitions and the image of the sport. By nature, these measures come at a stage of the disciplinary proceedings when the facts are sometimes not yet established to a sufficient degree that leads to the definite materialisation of a sanction and at a time when the concerned person has not been able yet – or has not been fully able yet – to assert the rights of defence. So they rely on a *prima facie* assessment of the situation, which may be contradicted by the results of subsequent procedural operations.

A person, however, faces the risk of being hit by a temporary suspension on the basis of suspicion, and is later cleared or penalised by a shorter-term suspension than the temporary suspension already served after the offences eventually proved less severe than the *prima facie* assessment revealed. However, sports institutions must take this risk, in the best interests of sport while avoiding hasty and unjustified decisions.

The liberalism of the administration of evidence

Court regulations on the admissibility of evidence don't apply in the context of disciplinary proceedings. For example, the Anglo-Saxon courts ban hearsay evidence but this ban does not apply to disciplinary proceedings. Additionally, even evidence obtained in a manner contrary to the law can sometimes be used. Moreover, a *numerus clausus* of evidence does not exist in disciplinary proceedings, and the

facts can be established by any means useful and relevant.

Only methods that do not lead to the discovery of the truth due to their random and unscientific nature or irrelevance for any other reason as well as means of evidence contrary to public policy and particularly disrespectful of human dignity are excluded. Parties also have the right to propose the administration of evidence. However, this right is not absolute in the sense that the competent disciplinary body enjoys an extensive margin of discretion and may refuse to administer the evidence that it doesn't deem relevant.

The burden of proof falls in principle on a disciplinary body rather than the accused person. However, disciplinary rules may establish presumptions, to an extent proportionate to the aim pursued without violating the principle of fair trial. For example, a sports institution may provide a presumption of correctness of the facts established by a state court, a tribunal, a disciplinary body or another competent state or sports jurisdiction.

The CAS has gone some way to establish a standard of proof, which lies midway between proof beyond reasonable doubt (standard privileged in criminal proceedings) and the simple preponderance of evidence (standard privileged in civil proceedings). The standard that it has adopted is "comfortable satisfaction" in the sense that it is sufficient that the decision-making body is comfortably satisfied with the established facts rather than evidence beyond reasonable doubt. The standard varies depending on the severity of the offence: the greater the offence attributed to the targeted person and consequently the forecasted sanction is, the greater the evidence needed to satisfy the judicial body. In the absence of a contrary provision in the regulations of the relevant sports federation, the CAS applies the standard of comfortable satisfaction.

It is legitimate for sports organisations not to require that facts be proven beyond reasonable doubt for a penalty to be imposed. Of course, this entails the risk and even a certain probability that innocent people are punished, but this kind of injustice must be accepted in the best interest of the integrity of sport.

How Can Other Private Parties Contribute to Economic Sanctions Against Violations of the Integrity of Sports?

Whatever form sponsorship takes, the sponsor's goal is to showcase its brand and profit from the reputation of the sport or the event to create a positive image and achieve commercial gain. The fame of the athlete or event is thus essential, which explains why sponsors seek to protect themselves against doping cases and manipulation of competitions that might tarnish the image of these events or implicate sponsored players. It is therefore a question of initially protecting the sponsor.

The sponsor must pay particular attention to the formulation of a contract in order to protect himself against cases of doping and match fixing. Two types of clauses surface as a result of practice. They are listed in contracts linking players and sponsor with the aim of inciting both parties to implement the contract properly: the morals clauses, specific provisions and warranties.

The moral clauses were originally included in contracts signed between movie production studios and actors with the aim of officially protecting the investment made by studios and reassuring the public. Actors promised for example not to do or commit anything tending to degrade him (her) in society or bring him (her) into public hatred, contempt, scorn or ridicule; or tending to shock, insult or offend the community or outrage public morals or decency; or tending to the prejudice of the Universal Film Manufacturing Co. or the motion picture industry.

These clauses were then replicated in the fashion industry, then eventually in sports. In the latter case, these clauses became conventional and are written in a sufficiently broad way to include a maximum of illegal behaviour or conduct that could harm the reputation of the player, and incidentally the sponsor. As for the specific provisions and warranties, the goal behind them is to target very specific circumstances and behaviour as to impose an adequate sanction. They are usually stipulated in relation to players whose behaviour wasn't always found to be compliant with



the spirit of the sport and more broadly what sponsors expect from them.

Sanctions against athletes may be cumbersome: while some sponsors only end their future relationship with the sponsored players, leaving past relationships intact, others go as far as demanding the repayment of previous amounts that they rewarded for performances gained by fraud.

In the absence of a contractual clause, nothing appears to oppose the implementation of implicit obligations on athletes provided that this implied obligation only addresses behaviour contrary to sports values, including practices related to sports cheating in the broad sense.

Conversely, and due to financial issues, the sponsor itself may be involved in such practices. In this case, the party to seek protection is the athlete or the organiser of the sponsored event. In order to protect himself, and even though such cases remain rare, an athlete can ask his sponsor to be bound by a morals clause. Indeed, because any harm to the reputation of the athlete or sponsored organisation can have serious consequences, it is important that they can unilaterally terminate the contract. In such a case, the player could penalise his sponsor if the latter were to adopt behaviour contrary to the values of the sport as to cast doubt over the performance of the athlete and thus tarnish his image.

Finally, it is important that only a portion of the amount owed by the sponsor to the player depends on the outcome of his performance to ensure that the sponsorship agreement, tying the compensation of the player (or club for example) to his performance does not induce him to get involved in a scheme of match-fixing.

How Can States and International Organisations Render More Effective the Criminal Repression of the Manipulation of Sports Competitions?

The insufficiency of international instruments currently in force

The proper international judicial framework (interstate) remains to this day little developed. No international legal

instrument that is specifically applicable to sports corruption, *latu sensu*, or the manipulation of sports competitions whether or not related to sports betting, exist. There is therefore no binding and generally acceptable definition regarding the manipulation of sports competitions at the international level since the definitions provided by some national laws, which include specific provisions on the subject, are also far from being perfectly identical (*infra*). Coordination of repression and international judicial cooperation cannot but suffer.

Only partial and random international instruments of application exist

There are few instruments in international law that may be applicable to certain aspects of cases of manipulation of sports competitions. These include conventions on corruption, transnational organised crime and, to a lesser extent, cybercrime.

Conventions regarding corruption do not always apply to the private sector and consequently sports institutions

The two major conventions in the field of fighting corruption which comprises the United Nations Convention against Corruption adopted on 31 October 2003 and the Criminal Law Convention on Corruption adopted by the European Council on 27 January 1999, potentially cover a relatively limited number of offences that could be classified as manipulation of sports competition.

First of all, their provisions on corruption in the public sector seem difficult to apply to the manipulation of sports competitions since this is usually undertaken by persons who do not exercise any public authority prerogative.

Furthermore, the criminalisation of acts of corruption in the private sector remains optional for the parties to these instruments, and even if the provisions of these instruments concerning corruption in the private sector are applicable to certain forms of match-fixing linking corruption between two persons, they are not applicable

to the fraudulent behaviour of one person.

In addition, it appears from the preliminary findings of the review mechanism for the implementation of the UN Convention on Corruption that, to this day, less than half of the member states have criminalised acts of corruption in the private sector and their approaches have varied significantly, either in terms of incriminating material or international judicial cooperation.

To the extent of their applicability to corruption cases in the private sector, these international instruments will allow the prevention of cases of manipulation of sports competition involving a player in the competition and a third party who offers him a reward in exchange for performing against his team, contrary to sports ethics and disciplinary law. In contrast, the system is not applicable to bookmakers, who offer irregular sports bets while being aware of a manipulation of the competition that is subject to sports bets, if the bookmakers wasn't awarded an unfair advantage from a third party or who didn't offer an advantage to an athlete/official of the competition. It seems to also exclude the case of a referee who takes the initiative on his own (without being corrupted) and bets on a competition, which he is supervising and intends to manipulate.

In short, the conventions on corruption seem only to cover a small part of the phenomena of corruption in sports.

The instruments relating to transnational organised crime can, in principle, apply to the most extreme forms of the manipulation of sports competitions

In the case of practices that fall under organised crime instruments, the provisions of the UN Convention against Transnational Organised Crime adopted on 15 November 2000 seem applicable. They require that member states must criminalise, in their national legal systems, the participation in activities of an organised criminal group, laundering of the proceeds of crime, corruption and obstruction of justice, if the offence is considered serious (those which are punishable by imprisonment for no less

than four years or a more serious penalty) and if offences have a transnational character.

However, the effective implementation of the Convention on the manipulation of sports competitions is fraught with difficulties. On the one hand, the existence of a serious offence in the national law of the member states is a condition for the applicability of the Convention, which would imply that the manipulation of sports competition is subject, either to a form of corruption or fraud, that is subject to penalties in accordance with the severity of the offence punishable under national laws. On the other hand, the transnational nature of the offence is established in some cases of manipulation but not all. Finally, national legislations, when addressing match-fixing in one way or another, are far from being uniform when it comes to the severity of the criminal sanction that triggers the implementation of the Convention.

Alone, the Convention cannot represent an effective tool against the manipulation of sports competitions related to bets, because, although important, it is potentially only applicable to a particular aspect of the problem.

Instruments against cybercrime can be usefully applied in a complementary manner

As for the Convention of the European Council on Cybercrime of 23 November 2011, which is the first international convention applicable to criminal offences committed via the Internet, it could be applicable to offences related to online games. Mandatory criminalisation of certain behaviour could include offences in the field of sports betting, conducted today on the Internet, such as irregular sports bets offered on a competition by an online bookmaker who is aware that the competition is manipulated. Nevertheless, assuming that the Convention is applicable to one or more aspects of the phenomenon of the manipulation of sports competition in connection with online sports betting, it seems definitive that only a specific framework in this regard could allow an effective fight against a phenomenon of this dimension.



The Need to Evaluate and Adjust the National Standards Applicable to the Manipulation of Sports Competitions

Since a few years, there have been many national and international initiatives aimed at adapting the legislative framework to incriminate the manipulation of sports competitions.

The reasons for the adaptation of national criminal law to the repression of manipulation of sports competitions

These efforts are justified by the threats posed by the manipulation of competitions against the benefits of sports, regardless of the form these efforts assume and the areas in which they are implemented, including the values which they seek to promote and their impact on the economy and public order. The manipulation of competitions endangers the educational, social, cultural and economic foundations of sport, an activity beneficial to the community, and presents a new field of activity for criminal groups.

The fight against the manipulation of sports competitions is therefore the responsibility of public authorities. Moreover, international law provides only partial answers to the problem of the manipulation of sports competitions. Therefore, resorting to criminal law is in itself necessary and legitimate in this area. It also allows the gathering of evidence that can be used in a disciplinary framework which promotes overall control of the phenomenon as countries have an interest in seeing sports organisations contribute to the fight against the manipulation of sports competitions, including its milder manifestations.

However, although necessary and legitimate, national legislation does not guarantee today the effectiveness and coherence of criminal prosecution since the vast majority of the identified cases have an international aspect. Therefore, prevention of fraud is at best random.

The adaptation of laws must address both the substantive criminal law as well as criminal procedure.

The diversity of national legal frameworks and of offences can be detrimental to the effectiveness of repression⁴⁷

To this day, national legislators have adopted very diverse solutions, the repression of sports fraud being imperfect and different depending on the country. This diversity is not surprising. It is only recently, in fact, that States became aware of the phenomenon of manipulation of sports results, or at least of its magnitude and the risks it poses to public order. Certain countries reacted quickly in order to adapt their legislation to the new situation, others did not.

In certain countries, the criminal prosecution of the manipulation of sports results is dealt with within the framework of norms dealing with the repression of corruption (Belgium, Czech Republic, Finland, Luxembourg, Romania, Slovakia, and Sweden). However, this pre-supposes that not only public agents but also private persons can be charged with acts of corruption (which is not the case for example in Argentina, and only in a very limited manner in Brazil, whereas the offence of active corruption in the private sector does not exist in the United Arab Emirates).

In fact, corrupt persons in cases of sports manipulations are in principle private persons (athletes, trainers, federation and club directors, members of the entourage of athletes, etc.). In addition, national legislation sometimes defines the category of persons concerned narrowly which can lead to gaps concerning repression. Thus, for example, in Romania and Sweden, only persons linked by contract to a moral entity can be charged with this offence, which certainly includes professional football players but not amateur players. In Belgium and Luxembourg, criminal law lists active and passive corruption in the private sector as offences, but the definition of these types of corruption limits the offence to the field of business. Another issue arises from the definition of the term bribe, which does not always include the concepts of unwarranted benefit or advantage (for example, in Russia and Ukraine). Lastly, cases of manipulation without corruption are obviously never covered under this category (cases of athletes or referees

47. See report published in July 2013 by the IOC and UNODC "Criminalization approaches to combat match-fixing and illegal/irregular betting: a global perspective. Comparative study on the applicability of criminal law provisions concerning match-fixing and illegal/irregular betting".

that manipulate a competition in which they take part, and bet on the elements they manipulate).

In most countries, it is possible – or also possible – to refer to the general offence of fraud in order to deal with cases of manipulation of sports results (Germany, Austria, Denmark, Estonia, Finland, Hungary, Ireland, Latvia, Lithuania, the Netherlands, Slovakia, Argentina, Australia, Brazil, Canada, People's Republic of China, Hong Kong, New Zealand, Nigeria, Qatar, Republic of Korea, Thailand, Trinidad and Tobago, Ukraine, United Arab Emirates). A link between fraud and sports bets should generally exist in order to successfully establish an offence. An examination of legislation leads to the conclusion that the use of the concept of fraud poses very serious practical problems, in particular concerning evidence, regarding the link between the manipulation, the unlawful advantage and the damage.

In the United Kingdom and some Australian territories there is a specific provision criminalising “cheating at gambling” which punishes anyone who cheats in relation to betting or who adopts any behaviour in order to enable another person to cheat in connection with betting, or who assists another person for that purpose; a result is not needed. This model was criticised because of the difficulty to establish a link between a wager and an incident whose result is the manipulation of a competition.

A “sporting corruption” offence, or an equivalent offence can be provided for in the criminal code (Bulgaria, Spain, France), the law on sport (Cyprus, Greece, Poland) or in a specific law on sports fraud (Italy, Malta, Portugal). Outside the European Union, several States have also defined sports fraud as a specific offence (Japan, Russian Federation, South Africa, United States of America, on the federal level and in certain States). Some of these provisions are criticised, in particular because they seem to be incomplete, specifically because they only apply to professional football (Japan), to professional sports (Spain, Russia), to the manipulation of the final result of a competition, and not other aspects of the game (Spain), to official competitions organised by specific federations

and not others, in particular, not to training matches, which are sometimes manipulated (Italy) or even only to competitions in connection to which bets are possible and legal (Republic of Korea).

An example of good practice comes from the United States of America, where the 2006 United States Code, Section 224, defines “sporting contest” as any competition, in any sport, between individual competitors or teams of competitors (without consideration for the amateur or professional status of competitors), which is publicly announced before it begins. This method has the obvious advantage of taking into account the specificities of sport and possible manipulations of a competition, enabling the eventual prosecution and criminal sanctioning of the perpetrators of any manipulation without having to resort to the application of general standards, whose conditions are, in practice, sometimes difficult to fulfill or require a more or less extensive interpretation in order to cover acts of sports fraud.

In summary, the overall situation is not satisfactory. Only the adoption of well-designed criminal laws - that is to say sufficiently broad - and specific to the manipulation of sports competitions can provide a consistent and effective repression. However, this approach still faces some resistance. Even though practically all sports organisations recognise that specific criminal laws are needed, this is not true of governments. It would appear essential that national norms are harmonised, not only because it would be detrimental if they had different fields of application depending on the country (coherence, visibility of criminal prosecution) but also because such differences make international cooperation more difficult, notably in the exchange of information between law enforcement authorities. A true improvement therefore requires a harmonisation of legislation and its alignment with the highest legal standard, in order to cover the widest possible field so that no act of manipulation would avoid prosecution.

Such harmonisation is not obvious. It requires the precise



definition of the scope and sanctions of criminal law, as well as reflection about the possible adaptation of criminal proceedings.

The scope of application of criminal law should be broadly defined

It is useful to consider which behaviours can be sanctioned only by disciplinary law, and which other behaviours create such a danger to public order as to be considered under criminal law. By making this distinction, the legislative authority provides its view on sports and their place in society. It also takes into consideration other criteria, such as the theoretical and concrete risks of manipulations, the prevalence – or prohibition – of sporting bets in the legal order concerned, the local traditions on criminal repression in general, etc. These criteria can be evaluated differently, depending on the countries, times and existence of sporting fraud precedents. Their evaluation could lead criminal legislators to embrace sports integrity in all its aspects, or on the contrary, to limit the scope of repression to a minimum, leaving it up to the sports organisations to impose disciplinary sanctions on their members.

In fact, the only solution for an effective repression of the manipulation of sports competitions consists in broadly defining the scope of application of criminal law.

The criminal sanctions should be modulated according to the gravity of corruption acts

In their current state, criminal sanctions that are possible in cases of the manipulation of sports competitions vary greatly between legislations. In the European Union, the maximum varies from two years of imprisonment in Finland, to fifteen years in Romania, knowing that, in the most serious cases, tribunals could consider aggravating circumstances that would allow handing down sentences that go beyond the maximum that can be imposed in other cases.

In any case, it should be possible to impose sufficiently significant criminal sanctions in cases that warrant them, in particular when dealing with organised criminals

who manipulate sports competitions for a living. In this regard, a maximum of two years of imprisonment seems questionable.

The criminal procedure faces limits that should be overcome

An adequate substantive criminal law is not enough – far from it – to guarantee the effective repression of the manipulation of sporting results: to bring a person before a tribunal, this tribunal should have jurisdiction, and the criminal prosecution authorities should collect sufficient evidence.

It is often in this regard that proceedings fail: like other behaviour relating to corruption, those concerning sports fraud are very difficult to apprehend because the perpetrators act discreetly, often within an elaborate scheme, leaving little or no traces. Transactions are conducted in cash – concerning wagers for sports bets – or through electronic tools that are difficult to detect. The manipulation in itself is not obvious. Intent to cheat is practically impossible to establish directly, except when confessed. The international context in which fraudulent acts take place does not make police investigations easier. Victims generally do not realise that an offence was committed.

Reforms of criminal procedure should be suggested

Only adequate criminal procedure instruments can lead to the discovery of offences, which is an essential precondition for any prosecution.

Concerning jurisdiction, it should be noted that the principle of territoriality, i.e. local jurisdiction for offences committed on the territory concerned, is accepted by all legislators. The principles of active and passive personality should also be applied.

In most legal orders, citizens are not required to report offences of which they become aware in one way or another. Regarding the prosecution of cases of manipulations of sports competitions, a duty to report acts to the criminal authorities (and potentially to the federations concerned),

and that would apply to organised crime members, undoubtedly constitutes a useful instrument. However, it is important to recognise that in practice, introducing a duty to report acts of sport fraud in criminal legislation would collide with a major obstacle: why impose such a duty for this kind of act and not for other more serious crimes?

In order to encourage people, including the perpetrators of offences, to reveal to the criminal authorities facts of which they are aware, the potential whistleblowers should be aware of the possibility to reveal the facts in an established framework, the appropriate mechanisms should be put in place to collect their confidences and the whistleblowers should be protected from acts of revenge to which they become exposed following the revelations they make.

The detection of cases of manipulation of sports competitions, as the investigative phase that precedes or follows it, is always difficult. This type of offence leaves little or no material trace and the perpetrators seldom or never use the same discreet methods used by organised crime. Practical experience shows that official surveillance methods, in particular telephone tapping and stakeouts, play an essential and even decisive role in the success of numerous investigations, in particular those that allowed the uncovering of the largest number of manipulated football games (the “Bochum” case in Germany, the Calciopoli procedure in Italy, the Fenerbahçe and other cases in Turkey). Criminal prosecution authorities should therefore be able to use discreet methods of surveillance in investigations concerning sports fraud (telephone tapping, monitoring of electronic and postal correspondence, hidden microphones and cameras, undercover agents, discreet stakeouts, monitored deliveries, etc.). Currently, national legislations do not accept the use of these methods in investigations concerning the manipulation of sports competitions, although surveillance measures are possible in the large majority of countries. This situation should be addressed.

Criminal prosecuting authorities, under the condition of respecting guaranteed rights and liberties, should also be able to use, in investigations concerning sports fraud, other

procedural methods, potentially methods of constraint, usually provided for in criminal procedure legislations: arrests, searches, interrogations, expert opinions, document requests (notably bank and credit card statements, telephone calls and emails, excerpts from records such as corporate records and real estate records, etc.), etc.

In addition, the success of an investigation can depend on the willingness of suspects to cooperate with criminal authorities. Indeed, the cooperation of suspects is made easier if something can be offered to them, in terms of a reduced sentence or even the withdrawal of charges. This is the reason for which many laws provide for the possibility of agreements between the prosecution and the defence, aimed at getting suspects to reveal their criminal activities, and potentially, that of third parties. Therefore, legislators should adopt appropriate provisions in order to facilitate the unveiling of criminal acts in the context of plea bargains. However, excesses should be avoided, such as completely dropping the charges against the perpetrators of serious crimes in exchange for providing information concerning third parties.

Lastly, sports federations should be able to access the records of criminal proceedings initiated against presumed perpetrators of manipulations, with, if necessary, the formal status as parties to the criminal proceedings (see also *infra* on the exchange of information).

Given the mixed assessment of the applicable international instruments and the disparate nature of national provisions, the adoption of an international agreement on the fight against the manipulation of sports competitions emerges as an urgent necessity.

Need to Adopt an International Agreement Dedicated to Combating the Manipulation of Sports Competitions

It is necessary for a binding international agreement between States to give a clear and workable definition of the manipulation of sports competitions, to force the parties to combat illegal and irregular bets, and to make the



manipulation of sports competitions into a criminal offence in their legal orders, and to be able to serve as a basis for international judicial cooperation.

Various processes are possible to reach such a result. In any case, although an interstate agreement constitutes an essential element of an international regime of combating the manipulation of sports competitions, other instruments should be associated to it.

Adapting existing instruments through protocol is not the most expedient method

The idea of an additional protocol (for instance to a convention concerning the fight against corruption) which would specifically concern the manipulation of sports competitions was considered without being chosen to this day. The disadvantage of this formula is that it does not really lend itself to the understanding of the problem of the regulation of sports betting which is central (see *supra*).

Adopting a special convention including the fight against the manipulation of sports competitions and the regulation of sports bets is the option that should be chosen

The option favoured in the framework of the Enlarged Partial Agreement on Sport (EPAS, Council of Europe), was, by involving the three main stakeholders in the discussions (State authorities, sports organisations, betting operators) and by hearing what other stakeholders have to say (sport or civil society representatives), to prepare an international convention specifically dedicated to the fight against the manipulation of sports competitions, whether or not linked to sports bets.

All the previous developments approve the choice to articulate in the same instrument the manipulation of sports competitions and its repression, the fight against the manipulation of competitions unrelated to sports bets and a stricter regulation of sports bets when they present a risk of manipulation for sport, the establishment of national mechanisms, and the national and international cooperation

between States and with the other principal stakeholders.

The difficulties in reaching an agreement on the division of the powers for the regulation of sports bets between States, to the extent needed for combating the manipulation of sports competitions, are undeniable. The differences in opinion between States on the proper way to approach the transnational sports betting market make up a large part of these difficulties. Yet a convention that would only deal with the repression, essentially criminal, of the manipulation of sports competitions would miss its target. It was demonstrated that the manipulation of sports competitions prospers, in part, because of the lack of transparency of the transnational market of sports bets.

The definition of the manipulation of sports competitions and the inclusion in the draft Convention, of a clear obligation to sanction this offence according to national law also presents difficulties.

However, globally, the Draft Convention establishes the bases of a global and coordinated policy for the fight against the manipulation of sports competitions, which makes use of the resources of the States. The commitments made by States to create national platforms encouraging the exchange of information and facilitating their communication is emblematic of the changes that should be made in the institutions and in practice in order to achieve an effective fight against the manipulation of sports competitions.

An inter-State agreement cannot however, on its own, put a stop to the manipulation of sports competitions

It would be unrealistic to think that a single international convention, albeit with universal application, could alone register the totality of initiatives of all stakeholders engaged in the fight against the manipulation of sports competitions. The strong links between prevention and repression – since the prevention of the manipulation of sports competitions is linked in part to the repression of illegal and irregular bets – as well as the complementarity of the responsibilities of

the sporting movement and States call for the adoption of a coordinated framework of instruments that include:

- Undertakings of States on issues of prevention and repression of the manipulation of sports competitions, whether or not related to sports bets (international agreement);
- The commitment of international sports institutions to prevent and repress the manipulation of sports competitions (binding declaration for sports institutions that would be reiterated in the IOC's pertinent instruments);
- An instrument harmonising the substantive disciplinary rules applicable to the manipulation of sports competitions (general outlines of a disciplinary code for sports institutions adhering to the commitment made above in their disciplinary instruments);
- Subsidiary commitments of betting operators, in particular concerning voluntary cooperation with sports institutions (code of good conduct and standard agreements to be made with sports institutions);

- The standards, classifications and technical rules necessary for coordinating the actions of the various stakeholders;
- Agreements (MoUs, etc.) between the international organisations concerned (UNESCO, Council of Europe, Interpol, UNODC, etc.) or between these organisations and other stakeholders (States, sports institutions).

The development of key instruments of an international regime for combating the manipulation of sports competitions is currently only beginning. At this time, the first international instrument is being developed within the Council of Europe with the goal to widen the circle of its participants well beyond Europe; the transnational legal framework appears to be fragmentary since there is no universal unification; the coordination of transnational law with national laws and international law is not yet ensured in a way to allow an effective combat of the manipulation of sports competitions on all levels – while respecting the autonomy of the sports movement as defined supra.



15.

HOW TO ACHIEVE BETTER
COORDINATION FOR AN EFFECTIVE
FIGHT AGAINST THE MANIPULATION
OF SPORTS COMPETITIONS?





15. HOW TO ACHIEVE BETTER COORDINATION FOR AN EFFECTIVE FIGHT AGAINST THE MANIPULATION OF SPORTS COMPETITIONS?

What are the Lessons to be Learned from Existing Coordination Mechanisms for Combating Fraud in Horseracing and Doping?

The Horseracing Industry Implemented Effective Mechanisms that Are not Fully Transferable to Sports **The creation of the British Horseracing Authority (BHA): a reaction to corruption scandals that shook the British horseracing world at the start of the 2000s**

In Great Britain, the relationship between horseraces and bets is unique and is more than two hundred and fifty years old. In 2002, the horseracing sector was faced with a difficult situation when a television programme denounced the races as being “institutionally corrupt”, in particular concerning manipulation related to bets. This scandal was followed by another scandal in 2004 which led to the arrest and prosecution of four jockeys, one trainer and an owner. However, the judge in charge of the case decided to put an end to the proceedings because of a lack of evidence. This failure led Great Britain to create, in 2007, a new regulator for horse races: the British Horseracing Authority (BHA). After commissioning a report by an independent expert, Dame Elisabeth Neville, the BHA decided to establish an efficient framework for combating sports corruption.

The strategy and powers of the British Horseracing Authority

The result was a strategy built around seven themes:

- The adoption of clear rules and anti-corruption policies;
- An effective system of licensing for practitioners;
- The development of investigative and intelligence capabilities;
- Rigorous disciplinary procedures and sanctions;
- The promotion of a policy of cooperation;
- Awareness and education programmes for participants and officials;
- The establishment of a global environment conducive to integrity.

The prevention and sanction policies of the BHA were developed and enacted around these seven axes.

As a result, and naming only a few examples, the rules on horse races were amended in a way to:

- Prohibit owners, trainer and stable personnel from betting on the defeat of their own horses;
- Clarify the definition of privileged information and sanction its use;
- In addition to the restrictions imposed on jockeys concerning the use of communication methods, compel all racing participants to communicate to the BHA all the

information contained in their phones relating to the race;

- Compel any racing participant to cooperate in the investigations conducted;
- Allow the BHA to investigate third parties and to initiate disciplinary actions against them;
- Condition the granting of licences on an undertaking by the licensees to comply with certain constraints: providing telephone invoices and information concerning accounts opened with betting operators, etc.;
- Give the BHA effective intelligence instruments;
- Give the BHA advanced and varied investigative tools; etc.

The powers of the British Horseracing Authority are not fully transferable to sports

Although it is possible to consider that the BHA's global strategy can be transferred to the sports that are most affected by the manipulation of sports competitions, the same cannot be said concerning the powers it yields and the prerogatives it holds.

This difficulty concerns practical reasons as well as the great diversity of national laws.

From a practical point of view, it is difficult to see, for example, how to compel the participants of a football or cricket competition to provide the regulating authorities with the information the latter needs, nor how this information would be collected if such an obligation were to be imposed.

From a legal point of view, it is sufficient to mention the difficulties encountered in France in relation to the imposition of the whereabouts requirement for doping⁴⁸ to realise how such drastic measures adopted by the BHA would be difficult to implement in another context. This being said, the solutions adopted by the BHA should be used as a reflection tool to improve prevention, detection and sanction mechanisms for cases of manipulation of sports competitions.

The Fight against Doping is Neither a Model nor an Anti-Model

In the area of combating doping, the media hype that followed the uncovering by French customs agents of an organised trafficking scheme of doping products a few days prior to the beginning of the Tour de France of 1998 (Festina case), led to the creation of the World Anti-Doping Agency (WADA).

The establishment of a global anti-doping body bringing together States and the sports movement constitutes a creative enterprise whose results are mixed

This establishment was aimed, on the one hand, at harmonising the norms and practices adopted by the various sporting authorities in the field, and on the other hand, at allowing States to take part in a fight that they had previously largely ignored, with some exceptions. Inaugurated by the IOC in Lausanne in June 1999, WADA was created as a Swiss private law foundation that includes, on a basis of parity, the sporting movement and public authorities. It allowed the adoption of a World Anti-Doping Code in 2003 (which entered into force in 2004 and was recently revised with the changes taking effect in 2015), signed by the vast majority of the sports movement and by national anti-doping agencies and made binding for States through an International Convention against Doping in Sport under the auspices of UNESCO in 2005, that entered into force in 2007 and was ratified by 174 States (status of ratification, as of August 1st 2013). The role of WADA in harmonising and coordinating the fight against doping between parties who have very different statuses, interests and agendas is regularly evoked. The world anti-doping programme provides these different stakeholders with common rules and distributes the powers among them, even if these powers constitute the object of regular disputes. These remarkable results were obtained through innovative mechanisms but cannot cover-up the structural flaws of the international anti-doping system.

48. See for example, French Conseil d'Etat, 18 December 2013, Mme A...B..., the Conseil d'Etat was faced with the question of the compliance with the rights and liberties guaranteed by the Constitution of articles L.232-5 and L.232-15 of the Code of Sports.



The international mechanism of combating doping collides with structural difficulties

The mechanism for combating doping should not be overestimated. The main cases of doping that were revealed during the last years, including the Puerto, and especially the Armstrong case, were uncovered as part the procedures provided for by the World Anti-Doping Programme, in particular thanks to a public intervention and recourse to non-analytical investigative means.

Several elements could explain the limitations of the model promoted within WADA. Some of these elements concern the internal decision-making process. The procedures are relatively complex and involve the succession of several filters, which can lead, on the one hand, to a delay in adapting rules applicable to the rapidly changing realities in practice, and on the other hand, to an alleviation of the constraints weighing on the stakeholders for political reasons. Other elements are linked to the flaws of the system that monitors the implementation of the common rules. The provisions of the Code sometimes leave a margin of appreciation to the authorities tasked with implementing them, and these provisions have to be transposed in order to produce effects. This transposition stage can be used by the States or sporting bodies to delay or limit the implementation of the rules. Effective monitoring by WADA of the compliance of the signatories to the World Anti-Doping Code seems necessary.

Nevertheless, the World Anti-Doping Code constitutes the greatest advancement for which WADA can take credit but this institution's results are inconclusive concerning the combat strategy and the development of rules. For reasons not limited to the issue of combating doping, the objective of facilitating the transfer of information between States and sporting entities has not yet been put in practice.

On this issue, the management of the Armstrong case by the US Anti-Doping Agency (USADA), and its conclusions dated 10 October 2012 evidenced the USADA's disregard of WADA. During its investigations, the USADA completely

ignored the World Anti-Doping Code and even the existence of WADA. The USADA used police or judicial proceedings, directly contacted national authorities to collect useful data and carefully made sure not to transfer information to the international federation concerned, which was seen as an accomplice to the offences, nor to WADA which was considered as being too "exposed" to the International Cycling Union. In this way, USADA highlighted the lack of efficiency of WADA in the largest doping affair of the past fifteen years.

However, the international mechanism of combating doping is necessary and can be perfected

Improvements in the current functioning of the agency can be considered: adapting the World Code to take into consideration the technological advances in doping, prohibiting certain substances that are currently tolerated (corticoids for example), requiring the transfer of ADAMS data (administration and doping management service) to all the parties concerned, overhauling the division of competences concerning international events. Other improvements are also possible: rapprochement with the World Health Organisation (WHO) and INTERPOL for research on the fraudulent use of molecules and for combating the trafficking of medicines, less "political" methods (i.e. designed on an exclusively scientific basis) for constituting the lists, coordinating national anti-doping organisations (NADO), creating an independent structure for arbitrating conflicts between federations and States etc.

This being said, the main problem resides in the change of WADA's scope of action. Although the sporting movement seems to wish to limit the organisation to a support and coordination function and take back the leadership of the fight against doping, States cannot accept such an exclusion from a strategic dimension. An intermediate solution would be a greater accountability of all the members of WADA in their application of the Code to which they accepted to be bound, as well as the creation of an independent body given broad powers of evaluation,

regulation and even sanction in order to ensure the proper execution of the Code's provisions.

The WADA experience can provide, at the very least, key lessons concerning the obstacles to institutionalisation and cooperation between the sporting movement and States, and more generally concerning the obstacles encountered by any hybrid organisation associating public interests and private interests: the watering down of objectives, the dissociation of interests, the politicisation of the decision-making process, the lack of mechanisms for monitoring the obligations of the different actors, discussions are still open on the balanced financing of the whole project.

However, WADA's mixed results should not doom a new attempt at cooperation within a formal and stable framework between States and the sports movement on the fight against the manipulation of sports competitions. Such an attempt is an imperative (*supra*).

The fight against doping presents important differences with the fight against the manipulation of sports competitions

In any event, the pure and simple reproduction of the normative and institutional model of the fight against doping in the fight against the manipulation of sports competitions collides with the considerable differences between the two phenomena.

In fact, on the one hand, unlike doping that involves, for the moment, a limited number of people and is generally easier to detect, sports corruption, and in particular the manipulation of competitions linked to sports bets, is today a very complex transnational phenomenon, involving a plurality of actors (including criminal networks) and raising enormous economic challenges.

On the other hand, the regulation of sports bets – which, although peripheral to sports, still constitute an element of a context that favours corruption in sports – has no equivalent in the fight against doping (at least as it was

originally conceived). It is inseparable from the fight against the manipulation of sports.

Lastly, the criminal repression of certain acts involved in the manipulation of sports competitions is essential, while criminal repression plays only a very minor role in the anti-doping system.

What Lessons can be Learned from Multi-Party Regulation and Cooperation Outside the Sporting World?

Given the complementarity of responsibilities in the fight against the manipulation of sports competitions, which are distributed principally, though not exclusively amongst States and the sports movement, it is necessary to reason in terms of an overall global platform rather than considering intergovernmental and transnational mechanisms separately.

Such a regime can be defined as a body of principles, norms, rules and implicit or explicit decision-making procedures, around which actors converge to act in a coordinated fashion in a specific field, despite their differences. The framework of coordination or cooperation can be unified, formal and personified or it can also simply ensure, in the absence of a systematic personification or formalisation, a successful coordination of a plurality of mechanisms allowing the production of the necessary norms, monitoring their application, facilitating their execution on the operation level, and evaluating the results, etc.

In other words, the creation of such a global regime is not necessarily identical to the creation of an international organisation that would be responsible for protecting the integrity of sport in all its aspects and the fight against the manipulation of sports competitions in all its dimensions.

A clean sweep of what already exists in an institutional or more or less institutional framework should not be made but rather an inclusion and rationalisation of existing initiatives.



The Creation of a Global Regime should be Based on Some Essential Principles

A very clear definition of the functions, their hierarchy and the rules of operation of each of the mechanisms considered

A precondition seems essential before identifying an institutional mechanism capable of contributing to the fight against the manipulation of sports competitions: the specific establishment of the functions that would be attributed to it and their hierarchy.

One of the stakes is to simultaneously organise and coordinate two main functions: the fight against illegal and irregular bets as well as the detection of suspect bets, on the one hand, with the prevention and repression of the manipulation of sports competitions on the other hand.

The distribution of powers and the balance between the participants to the mechanisms destined to serve these two main functions are then likely to vary depending on whether special importance is given to the development of norms, the administration of a system of information exchange, monitoring the implementation of the rules by their recipients, investigating or preventing violations, or even a combination of these functions. In fact, these functions will depend not only on the structure to be used, the participants that should be involved and the dynamics of power that can take place between them, but also the identification of the partners to be taken into consideration and the legal constraints.

Although the development of norms does not necessarily require putting in place a formalised institutional structure, other functions can warrant it. But the structure chosen will depend on the precise and concrete tasks that will be assigned to it. For example: the establishment of a mechanism capable of ensuring effective monitoring of the applicable rules could necessitate an organic or functional independence from the recipients of these rules; a system of information exchange falling under intelligence activities is not identical to a system of information exchange falling under international police and judicial cooperation; the

constitution of a common database capable of facilitating the detection of suspicious or irregular bets does not involve an excessively developed administrative body but presupposes the compliance with rules relating to the protection of personal data, failing which the participation of the competent national authorities could be compromised.

If a plurality of mechanisms is created to perform a series of clearly identified functions, it is important to envisage coordination efforts between them and a regular evaluation of the results of the regime as a whole.

Procedures ensuring the legitimacy and the accountability of each mechanism in the long term

The establishment of a global regime is only possible if its legitimacy and accountability are ensured. It is therefore essential that mechanisms be provided for in a way that the institutions vested with international functions, whatever their status, take into account the stakeholders and inform them of their actions.

These guarantees are essentially procedural. They can pertain to the requirements of transparency and participation on the one hand, and the motivation to act on the other hand, or even the right to an appeal against decisions taken within the framework of the mechanism. The adherence to these principles can not only increase legitimacy, but also reinforce the adhesion of the stakeholders, thus ensuring the effectiveness of the mechanism.

Only independent control procedures can guarantee to the stakeholders that the mechanism complies with the rules that they established for it and that it established for itself. Such monitoring can be diffuse and intervene at the stage of implementing the decisions taken within the framework of the global regime, as is shown by the example of the indirect pressure that the European Convention on Human Rights (ECHR) applies to WADA. But in order to avoid such pressure, the global regimes should establish internal mechanisms - mediators, focal points and other periodical examinations by independent teams - allowing a reinforcement of accountability.

Balanced and stable rules on financing

The sustainability of such a global regime also relies on the elaboration of balanced and stable rules on financing. Several types of contributions can be considered: the regime can be financed by the States, all the stakeholders, or those who benefit from its services. Such a financial model should be sustainable. It can be based on proper resources and on mandatory or voluntary contributions, on contributions in-kind and on monetary contributions.

The traditional financing methods, relying on contributions by participants, and in particular States or the sports movement, could therefore be supplemented by financing methods indexed to a part of the betting tax when this system is used (see *infra*) or to a part of broadcasting rights, since the media value of competitions depends on the integrity of sports competitions. In addition, certain stakeholders can bring a contribution in-kind in the form of making available competent personnel, expertise, information or technical know-how.

Monitoring procedures on the obligations of the various stakeholders

The implementation of a global regime depends on the support of its participants. The fight against the manipulation of competitions requires the resolute and combined action of public bodies, the sports movement and betting operators. Therefore, the effectiveness of such a regime largely depends on its ability to establish procedures for monitoring the obligations of the various stakeholders.

This monitoring process should not be confused with the one that concerns the mechanism itself. At issue here is the establishment of peer-review systems in which peers and/or other stakeholders evaluate the contribution of each of the parties to the global regime (such as the mechanism of the United Nations Convention against Corruption). This monitoring can be done by teams made up of State representatives but also representatives of the sports movement or even betting operators. The addition of non-governmental organisations interested in the defence and

promotion of sport's integrity is not excluded, whether these organisations comprise athletes, anti-corruption militants or proponents of honest sports. Alternatively, a mechanism of monitoring by experts that are completely independent from the stakeholders can be preferred.

These mechanisms should be given sufficient means for a quantitative as well as qualitative review of the stakeholders' compliance with their obligations. This should be followed by the adoption of compliance or non-compliance reports with indications as to the process to follow in order to conform to the system's requirements, on the best practices of the various stakeholders, the most useful interpretation of debated norms and lastly on the potential amendments that would lead to the identification of practices which, with regard to sports bets as well as the manipulation of sports competitions, are constantly evolving in order to find ways around the control mechanisms.

Mechanisms Borrowed from Other Frameworks Outside the Sporting World Would Amplify the Effects of Multi-party Cooperation Already Started in the Framework of the Fight Against the Manipulation of Sports Competitions

A review of the mechanisms developed outside the world of sports can shed light on the ways in which multi-party cooperation can develop, beyond the traditional international patterns. This allows a consideration of the concrete options for the construction of a global regime for combating the manipulation of sports competitions.

The sectors considered indicate that the institutional frameworks chosen can be flexible and include public and private stakeholders in variable proportions. The mechanisms can remain primarily public and informally assemble national regulators, as is the case in the financial sector (Basel Committee, International Organization of Securities Commissions [IOSCO], Financial Action Task Force [FATF]). They can take the form of partly institutionalised mechanisms, such as the Kimberley Process certification scheme, formally set up only by States, but which closely



includes the diamond industry and civil society.

Regarding action by a traditional international organisation such as WHO, it does not exclude the possibility of establishing multiparty institutions such as IMPACT (International Medical Products Anti-Counterfeiting Taskforce), which involves national regulatory authorities in the medicine industry, international organisations and international associations of patients, health professionals or pharmaceutical laboratories. Regardless of the form taken by the association of public and private actors, these examples show that the interests of the various participants should be clearly defined in order to prevent possible tensions between the sometimes different objectives pursued by these different participants and the risks of “regulatory capture” by one of these stakeholders.⁴⁹ Furthermore, the regulation mechanisms are not exclusive and many systems can combine in order to effectively regulate a sector (e.g. diamonds, military and private security corporations).

At the normative level, the sectors considered lead to nuancing the distinctions between hard law and soft law, public and private instruments, international, transnational and internal sources. In fact, these sectors are characterised, similarly to the manipulation of sports competitions sector, by a global dimension and a variety of participants that are subject to different legal orders. Indeed, the global regulatory effects are sought through a variety of instruments of different statuses. This is the case in the context of financial regulation as well as the fight against money laundering, the regulation of military and private security corporations or even the fight against ‘blood diamonds’. In any case, soft law instruments are preferred.

These instruments can include all the stakeholders in the regulatory process allowing them to easily reach

a consensus, and they can be adapted to the evolution of the practices considered. The effectiveness of these mechanisms is however conditioned by two elements. On the one hand, they are often based on a market rationale and on the pressure applied on the stakeholders, forced to accept these formally non-binding norms, under penalty of being isolated, marginalised by a relatively well integrated society, or being deprived of certain benefits (financial regulation, FATE, Kimberley process, military and private security corporations). On the other hand, their integrity is conditional upon the establishment of effective monitoring and control systems, whether this task is given to stakeholders or to teams of independent experts. Any default in the evaluation, at the stage of the investigation or the decision, casts doubts on the system’s integrity, as can be the case with the Kimberley process.

On the operational level, multi-party cooperation can be implemented in various ways. One of the preferred solutions is that of certification, or, its softer version, grading. This method ensures, via certain control points, public (Kimberley) or private (military and private security corporations), that the stakeholders of a sector are complying with the common rules. Another cooperation model is embodied in the gathering and sharing of information, in particular via national contact points (Kimberley). This gathering and sharing primarily allows the collection of information on the magnitude of a phenomenon. The development of a classification of the types of practices that should be sought in order to update the methods of the control and repression authorities is also successfully used. But multi-party cooperation can go even further. In this way, IMPACT can coordinate, with Interpol, targeted operations of national police in order to combat counterfeit medicines.

49. This expression defines the ascendancy taken by a regulated entity on the regulatory authority.

16.

WHAT ARE THE COMMON PRINCIPLES THAT ALL STAKEHOLDERS COMMITTED TO FIGHTING THE MANIPULATION OF SPORTS COMPETITIONS SHOULD RESPECT?





16. WHAT ARE THE COMMON PRINCIPLES THAT ALL STAKEHOLDERS COMMITTED TO FIGHTING THE MANIPULATION OF SPORTS COMPETITIONS SHOULD RESPECT?

In order to effectively combat the manipulation of sports competitions, States and sporting organisations have every interest in sharing their means of action and coordinating their prevention and repression policies. In the context of this concrete fight, certain principles necessarily frame the actions of both States and sports organisations.

Respecting the Fundamental Rights of Human Beings in Procedures to Fight Against the Manipulation of Sports Competitions **Increasing worries and disputes**

Various stakeholders, public or private, are subject to the requirement to comply with the fundamental rights of the persons concerned, through prevention measures as well as repression measures related to violations of sport integrity.

The fight against doping raised numerous concerns (in particular with regard to the right to privacy of athletes or their right of free movement) expressed in developed legal opinions that were taken into account in the jurisprudence of national and disciplinary jurisdictions. This constitutes an important precedent that supports the idea that the development of effective tools for combating

the manipulation of sports competitions should not be envisaged without first identifying the common principles applicable to the stakeholders concerned.

In addition, concerning measures for combating the manipulation of sports competitions, the number of disputes is increasing before national jurisdictions, the Court of Arbitration for Sport and even before certain international jurisdictions (such as the European Court of Human Rights), where applicants do not hesitate to contest the legality of decisions taken by sports organisations on the basis of rules protecting their fundamental rights.

A latent constraint: the applicability of the European Convention on Human Rights to sports institutions

The international instrument that is most likely to apply in a direct way to the sporting movement (through the Court of Arbitration for Sport, whose decisions can be contested before the Swiss Federal Tribunal) is the European Convention on Human Rights (Switzerland, the State of the Seat of the CAS, is party to the ECHR). Other sources should also be taken into consideration, such as the national constitutions or certain other international or regional instruments.

The European States are bound

The States Parties to the ECHR can be held liable for their own legal framework in the field of sports in general and in the fight against the manipulation of sports competitions in particular. But States can also be held liable for violations of human rights committed by private persons – and in particular by sports organisations placed under their jurisdiction – when these violations were made possible by a lack of monitoring of these persons' activities. This is called negative or passive interference.

... and (international) sports institutions too!

As private organisations, the sports institutions could be considered as free from any obligation to respect human rights, whose main purpose is to protect private persons against interferences by the public authorities. However, this is not the case.

First, the object and finalities of norms for the protection of human rights, regardless of their source, have evolved in such a way that they can presently regulate not only the actions of States but also those of private persons who are in a position to affect the rights and liberties of other private persons (employers or donors for example).

In addition, because of the very specific nature of the link between a sports organisation and its members as well as the extent of the prerogatives exercised by the former on the latter (exorbitant private powers) – the “sporting powers” should be considered as having a proper obligation to respect human rights. However, certain sports organisations placed at the bottom of the institutional pyramid obviously do not have the same power or the same prerogatives as the national or international federations who are in a monopoly situation. It is also clear that these status differences have consequences on the treatment of the issue of proper responsibility of sports organisations with regard to the respect of human rights.

The devices containing a risk of violating the fundamental rights of persons

The main tensions that can be observed in the implementation of an effective policy to combat the manipulation of sports competitions concern:

- Prevention measures with an intrusive character (monitoring communications, rules of behaviour extended to the athlete's entourage etc.);
- Sports disciplinary procedures with their specific rules: both sports disciplinary bodies and arbitral tribunals which control disciplinary decisions (including the CAS) are subject to the procedural safeguards of human rights, including first and foremost the right to a fair trial, the need for some modifications aimed at taking into account the specificities and proper needs of sports organisations;
- Disciplinary sanctions that have to comply with the principle of proportionality and which should be imposed by taking into account certain rights and liberties such as the freedom to carry out an activity.

Facilitating but also Regulating the Exchange of Information

The exchange of information between judicial authorities and sports institutions brings together two types of repressive power: the power to impose criminal sanctions and the power to impose disciplinary sanctions which do not share the same information and are not based on the same investigative powers but should be exercised in a complementary manner.

Converging interests, diverging interests or mutual trust?

Two completely opposite points of view can be sustained concerning the exchange of information. According to the first one, judicial authorities and sports institutions have sufficiently converging interests to accept the need to cooperate on the issue of information exchange. It can also be held, conversely, that the interests of national judicial



authorities and those of sports institutions are not sufficiently convergent and that the exchange of information could be counterproductive.

Without purporting to settle this dispute a priori, it can be held that criminal authorities should make a case-by-case appreciation of the need to coordinate their operations with those of the disciplinary bodies: in certain situations, they should be able to operate without informing anyone of their intentions. The criminal authorities do not necessarily have an interest in sports federations starting disciplinary proceedings across the board, with interrogations, etc., when, for example, an athlete is held in custody: disciplinary investigations can hinder the process of criminal investigations. It is therefore useful to ensure, to a certain extent, a coordination between the two investigations, whether through a coordination of scheduled operations or by momentarily putting a stop to the disciplinary investigations (in this case, the sports federation would have the possibility, in order to preserve their image, to inform the public that it has ceased its investigations at the request of the criminal authorities, as long as the public already knows about the existence of the investigations). In addition, effective coordination requires that the sports federations be informed, to a certain extent, about the goals and stakes of the ongoing criminal investigations.

The degree of trust between criminal authorities and sports organisations, in each particular case, will also influence the position of the former on the possibility of coordinating with the latter.

The communication of elements by the sporting movement to the public authorities and vice-versa should be established.

The transfer of information by the sporting movement to public authorities is in its interests

The flow of information in this direction does not seem to pose any major legal problems. From the perspective of sports organisations, full cooperation with the criminal authorities seems self-evident.

However, certain stakeholders in the sporting movement could be tempted to protect their members from police investigations, for all sorts of reasons, such as the protection of the personality, comradeship or even threats to the sports organisation's image, linked to the revelation of criminal acts committed by its members. These kinds of reasons can lead sporting managers to refuse to fully and voluntarily cooperate with the criminal authorities.

Therefore, it may be proper to compel elements of the sports movement to apply to the judicial authorities when they uncover facts capable of constituting a criminal offence.

Ultimately, this could even be advantageous when third parties who are not implicated in federal affairs are involved (members of organised crime, etc.) and even more so when the facts of the case, through their nature or complexity, concern the criminal sanction more than the disciplinary sanction, which would only apply marginally.

Nevertheless, a legal restriction should be mentioned. In certain cases, sports organisations collect evidence that is inconsistent with criminal law procedural guarantees (cf. CAS cases *Amos Adamu v. FIFA*, 2012 and *Amadou Diakite v. FIFA*, 2012 – telephone tapping carried out by journalists). In other words, the transfer of certain information – from sports organisations to judicial authorities – is impossible because of the procedural guarantees linked to each proceeding.

The transfer of information from public authorities to the sporting movement is necessary but involves risks

Although information held by sports organisations are often useful and sometimes necessary for criminal authorities, the former only rarely effectively prevent manipulations of competitions without first having access to information previously obtained by the criminal authorities.

It is undoubtedly in the public interest to sanction corrupt athletes, trainers, referees and officials in disciplinary proceedings as well as in criminal proceedings (the image of sport, sport's positive role in society, etc.). In order to sanction corrupt participants, sports organisations should

have the necessary information. In numerous cases of the manipulation of competitions, the essential evidence comes from criminal investigations and was obtained by means that sports organisations do not possess (telephone conversation recordings, bank statements, data concerning sports bets, etc.).

However, the communication of administrative or judicial documents to sports federations could present drawbacks and provoke opposition.

Although sometimes vested with public service or general interest missions, sports federations are fundamentally private organisations that are not intended to act in a police or judicial capacity. Their statutes give them disciplinary powers applicable to their members and essentially linked to the participation in the competitions they organise (*supra*). Practically all federations have adequate structures and qualified human skills to fulfil this disciplinary function and collect data from the public authorities and use them as needed.

This being said, the statutory organisation of these procedures can lead to hierarchical appeals; instead of being limited to the specialised bodies, and the cases can be brought before general structures (executive bureau or steering committee) where all the members of the “sporting family” are present (sports directors, trainers, doctors, referees, administrative personnel). Some procedures can be disrupted (or neutralised from the start) by deliberate (associations with the suspected persons) or misguided practices (leaking the content of debates) or public disclosure of information concerning certain cases. The federations can also be faced with judicial and economic risks when these cases concern athletes with high earnings who can afford the services of high-quality legal counsel whose defence strategies are made easier by the shortcomings of this type of procedure.

However, without prejudice to the independence of criminal and disciplinary proceedings (*supra*), the main argument in favour of the exchange of information between the judicial authorities and sporting institutions resides in

their complementarity which could turn out to be an asset for untangling complex cases, dismantling “networks” of manipulators of sports competitions, and for giving each offence, according to its seriousness, the appropriate sanction (disciplinary and/or criminal).

The exchange of information is subject to strong legal constraints

It is important to always compare the expected benefits of an exchange of information and complementary sanctions to the legal constraints associated with it. For instance, the information held by judicial authorities can be of such a nature – because of the way it was obtained – that it cannot be conveyed to third parties or used for purposes other than those for which it was obtained (conversely, sports institutions can use, in the disciplinary proceedings, elements that are not probative in the criminal proceedings).

Public authorities in general and criminal authorities in particular are subject by law, to the duty of secrecy in connection with their functions and the investigations. Except when provided for otherwise by law, they cannot, in principle, reveal information resulting from criminal records until the judgment phase where the facts are revealed in open court. Among the usual legal exceptions is the possibility for certain criminal authorities to give information to the public on ongoing investigations when the need arises (generally the use of this power is regulated by certain rules – more or less detailed depending on the system – specifically, for example, the interest of the general public in being informed of the authorities’ activities, to avoid risks of publishing inaccurate news, etc.).

The communication to third parties of information contained in criminal records can, depending on the progress of the investigations and the circumstances, generate a risk of collusion. For instance, the premature revelation of ongoing telephone taps could lead the targeted persons to agree on the explanations they will provide to the police officers when interrogated. The disclosure of the simple fact that an investigation has been initiated can also lead



suspects to destroy evidence, for example by changing the hard drives on their computers. These elements clearly constitute obstacles to cooperation between criminal authorities and sporting organisations in the sense that the former should often make sure that the latter do not even know about the ongoing investigations, and much less about the information collected in these investigations.

In most cases, sports organisations need information from criminal authorities in order to be able to engage disciplinary proceedings against the perpetrators of reprehensible acts. However, they cannot and should not wait until the end of the criminal proceedings which generally take several years before leading to a final and enforceable judgment in order to impose disciplinary sanctions on the perpetrators. If an athlete or club president seriously suspected of fraud can still take part in the competitions, or, respectively, direct the club, this would seriously harm the image of sport, the integrity of the competitions, and effective prevention. For these reasons, it is recommended that sports organisations should be able to receive information resulting from criminal records before such information is made available to the public in open court. If one is to accept the principle according to which sports organisations should be given information by the criminal authorities before the end of the criminal

investigations this mechanism should take the form of a complex instrument, as a formal commitment undertaken by the sports institutions regarding the terms of use, conservation, treatment and communication of data.

Assuming that the exchange of information between national judicial authorities and international sports institutions can be done within a legal framework offering sufficient guarantees of legal certainty, the conditions surrounding the transmission of information from criminal authorities to sports institutions in the same country, on the one hand, and from criminal authorities to international sports institutions, on the other hand, should be very similar. States should, however, be able to legitimately require the inclusion of safeguard clauses giving them the right to refuse to transfer information without being held liable for such a decision.

Lastly, the establishment, during large sporting events such as the Olympic Games, of joint units, is particularly important. On the one hand, it is full of information concerning the dangers and good practices of information sharing, and on the other, it contributes to reinforcing trust between national institutions and sports institutions which could make it easier to define mechanisms of exchange of information between the national judicial authorities and international sports institutions.

17.

WHO FINANCES THE FIGHT AGAINST THE MANIPULATION OF SPORTS COMPETITIONS? THE BETTING TAX EXAMPLE





17. WHO FINANCES THE FIGHT AGAINST THE MANIPULATION OF SPORTS COMPETITIONS? THE BETTING TAX EXAMPLE

The financing of the fight against the manipulation of sports competitions, although an essential subject, is relatively little discussed or purposely ignored altogether.

Financing the fight against the manipulation of sports competitions: an accelerator of conflicts of interest

In fact, this issue crudely exposes the opposing interests of the stakeholders of the sporting world, as was shown in the economic analysis.

Although everyone agrees on the need to allocate a part of the revenues made on the sporting events markets to the fight against the manipulation of sports competitions, there are still disagreements as to the method to be chosen, the amounts perceived and monitoring their allocation.

The example of the betting tax exposes these difficulties.

The betting tax example

Adopted in Australia, New Zealand, Turkey and France, with some minor differences, the betting tax appears to be a priori an attractive solution. This betting tax consists in allowing the organisers of a sporting event (including federations) – who own the event – to receive a fair price for the commercial exploitation of these events by betting

operators. A part of these revenues should be used to establish and fund mechanisms for the protection of the integrity of the competitions by their organisers.⁵⁰

Although this mechanism produced some results, it collides with certain obstacles which reflect conflicts of interests and different priorities of the sports stakeholders:

- What should be the amount of the betting tax? This tax would be levied in addition to all other levies applicable to betting and gaming activities;
- What should the tax base be: the bets wagered or the gross gaming product?
- What are the sporting events and competitions to which the betting tax will apply?
- Does the betting tax violate economic freedoms and competition rules?
- Should the amount of the betting tax be regulated?
- How to make sure that the amounts collected will be effectively allotted in part to the establishment of protection mechanisms for the integrity of competitions by their organisers? Etc.

These questions are still being debated and reflect the difficulty of reaching agreements between the parties concerned, beyond accepting the principle of protecting

50. For a detailed analysis of the betting tax, see the report of the French Regulating Authority of Online Gaming (ARJEL) of February 2013.

sports integrity.

The financing of the fight against the manipulation of sports competitions constitutes an essential element for success.

The issue of the possibility of building an international platform to combat manipulations of sports competitions

A prospective approach that could be considered consists in financing an international platform for the fight against the manipulation of sports competitions. Unfortunately, even if such an international platform for the fight against the manipulation of sports competitions were to be created, and regardless of its nature, form and the powers it may be granted, the same conflicts of interests would appear.

The issue of financing this future platform, beyond the debates regarding its nature and its powers, constitutes one of the main issues to be resolved.

EDITORIAL CREDITS

Chairman and Editor in Chief of the Research Programme on Ethics and Sport Integrity

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Evelyne Lagrange (University Paris 1 Panthéon-Sorbonne, PhD, France)

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Emmanuel Picavet (University Paris 1 Panthéon-Sorbonne, PhD, France)

Pierre-Charles Pradier (University Paris 1 Panthéon-Sorbonne, PhD, France)

Laurent Vidal (University Paris 1 Panthéon-Sorbonne, PhD, France)

Main Contributors

Wladimir Andreff (University Paris 1 Panthéon-Sorbonne, PhD, France)

Florence Carpentier (Rouen University, PhD, France)

Lorenzo Casini (New York University (NYU) School of Law, Institute for International Law and Justice, PhD, United States of America)

Natalia Castro (University Paris 1 Panthéon-Sorbonne, PhD Student, France)

Patrick Clastres (Sciences Po Paris, PhD, France)

Pierre Cornu (supra)

Sabrina Cuendet (University Paris 1 Panthéon-Sorbonne, PhD, France)

Jacques Defrance (University Paris Ouest Nanterre, PhD, France)

Jacques Donzel (supra)

André Hervier (supra)

Patrick Jacob (University Paris 11, PhD, France)

Christian Kalb (supra)

Evelyne Lagrange (supra)

Yulia Lamova (Moscow High College of Economics, Russian Federation)

Etienne Marique (Head, Belgian Gambling Commission, Belgium)

Hayden Opie (Senior Lecturer, Director of Studies, Sports Law Melbourne University, PhD, Australia)

Denis Oswald (IOC Member; former Director, CIES, Switzerland; former Professor, University of Neuchâtel; Judge, Court of Arbitration for Sport (CAS), PhD, Switzerland)

Rick Parry (former Chief Executive, Liverpool Football Club; former head, FA Premier League, Honorary Doctorate, United Kingdom)

Emmanuel Picavet (supra)

Pierre-Charles Pradier (supra)

Ioannis Prezas (University Paris 1 Panthéon-Sorbonne, PhD, France)

Raphael Scemama (University Paris 1 Panthéon-Sorbonne, PhD Student, France)

Paul Scotney (Former Director of Integrity Services, British Horseracing Authority, United Kingdom)

David Soldini (University Paris 1 Panthéon-Sorbonne, PhD, France)

Laurent Vidal (supra)

Other Contributors

Martine Behar-Touchais (University Paris 1 Panthéon-Sorbonne, PhD, France)

Jean-Claude Boulay (Consultant, JCB Consulting, France)

Geoffray Brunaux (Reims University, PhD, France)

Céline Frossart (Consultant; Lecturer, ISCOM private school, PhD, France)

Ingrid Beutler (Consultant; former Director, Social Responsibility and Integrity Units, SportAccord; former Head, United Nations Office on Sport for Development and Peace, New Zealand)

Benjamin Bracquet (Consultant, Bracquet Consulting, France)

Joseph Chaoul (former Minister of Justice, Lebanon; Honorary President, Lebanese Council of State, PhD, Lebanon)

Arian De Guillenchmidt-Guignot (Lawyer, Paris Bar, PhD, France)

Eric Drossart (Consultant, IMG, Belgium)

Eric Fourneret (Paris-Descartes University, France)

Jean-Jacques Gouguet (Limoges University, PhD, France)

Annette Hadhazy (University Paris 1 Panthéon-Sorbonne and School for Advanced Studies in Social Sciences (EHESS), PhD Student, France)

Nasser Hinzab (University Paris 1 Panthéon-Sorbonne, PhD Student, France)

Cécile Huet (Legal Adviser, French Professional Football League, France)

Sarah Lacarrière (Integrity Officer, Sports Integrity Unit, SportAccord, Switzerland)

Stuart Page

Thierry Pujol (Director, Risk Management, French State National Lottery (Française des Jeux), France)

Camille Ternier (Catholic University of Lille, PhD Student, France)

Pim Verschuuren (Researcher, Institut de Relations Internationales et Stratégiques (IRIS), France)

Editorial Assistants

Ingrid Beutler (supra)

Stuart Page

Mallorie Trannois (PhD Student, Cergy-Pontoise University, France)

Translator

Patrick El Hayek



International Centre
for Sport Security

P.O. Box 64163, Doha - Qatar
Phone: +974 4430 8000
Fax: +974 4430 8001
Email: info@theicss.org

www.theicss.org