

Strasbourg, 30 November / novembre 2012
[cdpc/docs 2012/cdpc (2012) 19Bil]

CDPC (2012) 19 Bil.

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Questionnaire

Protocol to Criminal Law Convention on Corruption: Match-fixing

**Protocole à la Convention pénale sur la corruption : les matchs
arrangés**

Replies / Réponses

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QUESTIONS

1. Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?
2. Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?
3. Are you aware of any studies on these practices/phenomena that have been carried out in your country?
4. What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?

* * *

1. Quels phénomènes ou pratiques frauduleux/frauduleuses éventuellement observé(e)s dans les secteurs à but non lucratif (tels que le sport, l'aide humanitaire, la politique, les syndicats, etc.) ne sont pas couvert(e)s par les dispositions juridiques existantes sur la corruption dans votre pays?
2. A-t-on pour projet ou pour intention, dans votre pays, de prendre des mesures pour réagir à ces pratiques/phénomènes et remédier à d'éventuels vides juridiques en la matière?
3. Avez-vous connaissance de la conduite d'éventuelles études sur ces pratiques/phénomènes dans votre pays ?
4. Selon vous, quelles sont les difficultés juridiques (ressenties) pour ériger ces pratiques/phénomènes en infraction pénale?

AZERBAIJAN / AZERBAIDJAN

1. Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?

In our country, like in other non-profit sectors as well as in sport, any corrupt practices/phenomena are covered by the relevant legal provisions on bribery of the Criminal Code of the Republic of Azerbaijan.

The concepts of taking bribe (passive bribery) and giving bribe (active bribery) is explained in Articles 311 and 312 of the Criminal Code of the Republic of Azerbaijan and criminal liability on officials and other persons committing such offence is determined therein.

The meaning of the term “official person” is explained in Article 308 of the Criminal Code. Leaders and employees of state and municipal establishments, offices and organizations, and non-profit organizations, as well as persons with special authority performing organizational management or administrative economic functions in non-profit organizations are included in this category.

There is no need to answer following questions because of these practice/phenomena are covered relevant legal provisions.

2. Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?

3. Are you aware of any studies on these practices/phenomena that have been carried out in your country?

4. What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?

BELGIUM / BELGIQUE

1. *Quels phénomènes ou pratiques frauduleux/frauduleuses éventuellement observé(e)s dans les secteurs à but non lucratif (tels que le sport, l'aide humanitaire, la politique, les syndicats, etc.) ne sont pas couvert(e)s par les dispositions juridiques existantes sur la corruption dans votre pays?*

En Belgique, la corruption dans le secteur privé est régie par les articles 504bis et 504ter du Code pénal.

- Art.504bis.

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

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

- 504ter

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

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

Ces articles ont un champ d'application très large et s'appliquent également au secteur des activités des entreprises ou commercial, ainsi qu'aux relations d'emploi (personnes ayant un statut d'indépendant ou qui sont mandatées pour effectuer une mission particulière). Ainsi, ces articles sont, en général, à la base d'une condamnation pénale en cas de fraude liée au sport.

2. *A-t-on pour projet ou pour intention, dans votre pays, de prendre des mesures pour réagir à ces pratiques/phénomènes et remédier à d'éventuels vides juridiques en la matière?*

Le système belge tel qu'il est prévu actuellement en ce qui concerne la corruption dans le secteur privé fonctionne de façon satisfaisante. Aucune initiative législative n'est entamée à l'heure actuelle mais la question est envisagée (note analytique en préparation) depuis la recommandation du GRECO sur la corruption dans le secteur privé dans le rapport d'évaluation du Troisième cycle du 15 mai 2009.

3. *Avez-vous connaissance de la conduite d'éventuelles études sur ces pratiques/phénomènes dans votre pays ?*

Une seule pré-étude sur le sujet a été entreprise par l'Office Central pour la Répression de la Corruption (OCRC) de la police fédérale, portant sur le football en particulier.

4. Selon vous, quelles sont les difficultés juridiques (ressenties) pour ériger ces pratiques/phénomènes en infraction pénale?

Premièrement, les articles sur la corruption visent soit l'administrateur d'une personne morale, soit le préposé d'une personne morale ou physique. S'il est possible de poursuivre un gérant, entraîneur ou footballeur d'un club de football, en revanche, avec cette définition, il n'est pas possible de poursuivre une personne qui ne fait pas partie d'une personne morale et qui a agi de son propre chef.

Deuxièmement, le GRECO a conclu dans son rapport d'évaluation du Troisième Cycle que l'article 504bis exige, pour que l'infraction soit constituée, que l'agissement soit commis « à l'insu et sans autorisation » des responsables (selon le cas le conseil d'administration ou de l'assemblée générale, le mandant ou l'employeur). Cette restriction ne constitue pas une solution entièrement satisfaisante : le dispositif risque d'empêcher d'appréhender par exemple les cas de corruption-entente entre organes dirigeants de deux entités (clubs sportifs, sociétés) en vue de fausser les règles du jeu ou du marché. Le risque existe qu'un employé puisse être « couvert » ou disculpé a posteriori (après qu'il ou elle ait commis une infraction de corruption) par ses supérieurs dès lors qu'ils affirmeraient avoir eu connaissance des agissements réprimés par la justice.

BOSNIA AND HERZEGOVINA / BOSNIE ET HERZEGOVINE

1. Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?

Within the criminal legislation in Bosnia and Herzegovina there are no specific provisions related to bribery in sport.

However, there are rulebooks on disciplinary liability in force which provide basis for sanctions to collaborators of such conduct.

2. Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?

Few debates on this issue have been carried out. However, there is still no concrete initiative on legal reform in order to incriminate bribery in sport as a criminal offence.

3. Are you aware of any studies on these practices/phenomena that have been carried out in your country?

No available data on such kind of study.

4. What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?

There are no specific legal difficulties that have been identified.

Existence of a unique international instrument (Convention or Protocol) on this matter could be a helpful tool and good basis for strengthening of national legal framework related to corruption in sport.

ESTONIA / ESTONIE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

Estonian legislation on bribery does not explicitly exclude non-profit sector. However we have no practical experience with regard bribery in non-profit sector.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

There are no plans so far. Meantime we had a recommendation by the GRECO to amend the current wording of bribery offence, but this is not related to the current issue.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

No studies on the subject have been carried out in Estonia so far.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?"*

We haven't analysed this issue yet. Anyway we might have a question whether sports activities could be considered to be economical activity, which is the precondition to have a bribery case and whether the agreement between sportsmen or players would be sufficient as well.

FRANCE

1. *Quels phénomènes ou pratiques frauduleux/frauduleuses éventuellement observé(e)s dans les secteurs à but non lucratif (tels que le sport, l'aide humanitaire, la politique, les syndicats, etc.) ne sont pas couvert(e)s par les dispositions juridiques existantes sur la corruption dans votre pays?*

Tous les secteurs visés par cette question sont actuellement couverts par la législation française en matière de corruption qui vise à la fois le secteur public et le secteur privé.

Il convient par ailleurs de préciser que la loi n°2012-158 du 1er février 2012 visant à renforcer l'éthique du sport et les droits des sportifs, a notamment abouti à l'insertion, dans le code pénal, d'un article 445-1-1, incriminant spécifiquement la corruption sportive.

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

2. *A-t-on pour projet ou pour intention, dans votre pays, de prendre des mesures pour réagir à ces pratiques/phénomènes et remédier à d'éventuels vides juridiques en la matière?*

Au regard de la réponse à la question n°1, cette question est sans objet pour la France.

3. *Avez-vous connaissance de la conduite d'éventuelles études sur ces pratiques/phénomènes dans votre pays ?*

Rien à signaler

4. *Selon vous, quelles sont les difficultés juridiques (ressenties) pour ériger ces pratiques/phénomènes en infraction pénale?*

Sans objet

GEORGIA / GEORGIE

1. *Quels phénomènes ou pratiques frauduleux/frauduleuses éventuellement observé(e)s dans les secteurs à but non lucratif (tels que le sport, l'aide humanitaire, la politique, les syndicats, etc.) ne sont pas couvert(e)s par les dispositions juridiques existantes sur la corruption dans votre pays?*

La perpétration d'acte de corruption dans les secteurs à but non lucratif est pénalisée par l'article 221 du code pénal de la Géorgie. Cet article fait mention à «un autre type d'organisation» dans le cadre duquel sont commis les actes de corruption.

Version anglaise:

“Article 221 (Commercial Bribery) of the Criminal Code of Georgia

1. Promising, offering, giving or rendering money, securities, other property or render property service or/and other illegitimate benefits directly or indirectly to a person who holds managerial, representative or other special position or works in a commercial or other type of organization, in order to ensure that such person performs or abstains to perform any activity in the abuse of his official capacity, for the interest of the briber or a third person, is punished by fine or restriction of liberty up to two years and/or deprivation of liberty up to three years, by deprivation of the right to occupy a position or pursue a particular activity for the term not extending three years or without it.

2. (-----)

3. Request or receipt of offering, promising or giving, directly or indirectly, for the interest of himself/herself or other person, of money, securities, property or any undue advantage or rendering property service by a person who exercises managerial, representative or other special authority in a commercial or other type of organization or works in such organization, in order that person to act or refrain from acting in breach of his/her duties, for the interest of the bribe giver or other person, shall be punished by restriction of liberty up to three years and/or deprivation of liberty from two to four years, by deprivation of the right to occupy a position or pursue a particular activity up to three years term.”

2. *A-t-on pour projet ou pour intention, dans votre pays, de prendre des mesures pour réagir à ces pratiques/phénomènes et remédier à d'éventuels vides juridiques en la matière?*

/

3. *Avez-vous connaissance de la conduite d'éventuelles études sur ces pratiques/phénomènes dans votre pays ?*

Non

4. *Selon vous, quelles sont les difficultés juridiques (ressenties) pour ériger ces pratiques/phénomènes en infraction pénale?*

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IRELAND / IRLANDE

1. Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?

The Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906 Acts are the foundation blocks of Irish anti-corruption law. The Prevention of Corruption Act 1906 provides active and passive bribery offences for the private and public sectors. The Acts have been amended and extended by other Acts in 1916, 1995, 2001, 2005 and 2010. In addition to the written legislative Acts of parliament, the Irish legal system recognises the traditional offences enforced and interpreted by the courts in accordance with common law.

The offences in the Prevention of Corruption Act 1906 are premised on the corruption of the relationship of an "agent" to his/her "principal". However, the term "agent" as described within the corruption legislation is broader than the ordinary meaning of the word, and includes "any person acting for another". , as well as the Attorney General, the Director of Public Prosecutions, employees, members of public administration within the State and abroad, judges within Ireland and abroad, and other parties where the relationship is not predicated on the traditional agent/ principal connection such as "In the course of business activity", "...in breach of duties".

The offences in the Prevention of Corruption Acts are not restricted to a breach of duty or, directly, business activity. Instead the impact of the bribe can be the doing or the abstention from doing "any act in relation to his or her principal's affairs or business". Accordingly the flexibility of the agent and principal relationship under current Irish corruption legislation means it also provides for corruption in non-profit sectors as well as the public and private sectors. Additionally, Common Law recognises the corruption related offence of conspiracy to defraud.

2. Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?

The Government approved the general scheme of the Criminal Justice (Corruption) Bill 2012 in June 2012. The Bill, when enacted, will clarify and strengthen the law criminalising corruption in Ireland and replace seven overlapping corruption Acts. The Bill provides for a wide range of offences addressing acts of active and passive corruption. The active corruption offence will apply to any person corruptly offering a bribe to a person for doing an act in relation to his or her office, employment, position or business. The passive corruption offence will similarly apply to any person corruptly accepting a bribe for doing an act in relation to his or her office, employment, position or business. It is intended that these offences will be sufficiently broad to cover the non-profit sectors as well as the public and private sectors.

3. Are you aware of any studies on these practices/phenomena that have been carried out in your country?

No, however Ireland has continued on an ongoing basis to observe discussions at European level in this regard.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

The primary legal difficulty may not be in fact criminalising these practices, but in the operational difficulties in successfully prosecuting the offences. For example, providing sufficient evidence to the prosecution concerning the causal links between the related acts and the transfer of money or proving the fact that a player has deliberately underperformed will be difficult.

LATVIA / LETTONIE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

There are no specific legal provisions on bribery that deals with non-profit sector in Latvia. All bribery and corruption cases are dealt under the provisions of Criminal law not specifying the sector in which the crime has been committed.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

No, there are no plans to adopt specific legislative framework in order to separate conduct related to manipulating sport results or address these practices/phenomena. Besides, manipulating sport results can be realized in framework of other criminal and administrative offences.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

No, we are not aware of any studies that have been carried out in Latvia on these practices/phenomena.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

The difficulties are mostly based on the fact that the term „conduct of manipulating sport results” includes wide range of different possible offences with diverse seriousness, some applicable offences fall under criminal, some – under administrative offences.

Criminal liability is provided in cases, when offences are most serious and dangerous to the public, but administrative liability is provided in less serious or dangerous cases. Therefore proportionate sanctions and different types of legal liability are provided.

NETHERLANDS / PAYS-BAS

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

This question is nearly impossible to answer. Before going any further serious attempts should be made to clarify further which behaviour under which circumstances is envisaged. Abstract terms like phenomena cannot be used in the context of legislation.

As long as we do not know which problem should be addressed, questionnaires on legislation will not result in clear answers.

We limit our answer to the remark that the scope of our legislation is broad enough to cover public and private corruption.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

See answer 1

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

See answer 1.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

See answer 1.

POLAND / POLOGNE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

In Poland legal provisions cover corruption in non-profit sector under following presumes:

- A person or organization in question performs public function, i.e. the decision taken by them are of public meaning or an organization operates with public resources.
- Sport is fully covered by anti- corruption law (an Act on Sport of 2010/6/25).

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

There is intention to ratify an Additional Protocol to the Criminal Law Convention on corruption.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

Analysis were carried out as a follow-up to the III and the IV round evaluation of GRECO with a view to ensure a coherent interpretation and application of national law in this field (political parties, public officials, parliamentarians, judges, prosecutors).

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

No major difficulties have been perceived.

PORTUGAL

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

Portuguese legislation is comprehensive regarding the prevention and fight against corruption. Provisions are in force covering corruption in the public sector (Criminal Code) and corruption in the private sector and in international business transactions (Law nr. 20/2008, of 21 April).

Other laws are in force related to the corruption in sports (Law nr. 50/2007, of 31 August) and corruption of individuals holding political positions (Law nr. 34/87, of 16 July). Mentioned legislation has been updated in the last recent years.

Mentioned laws are applicable a broad spectrum of activities and illegal conducts.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

No legislative plans or intentions are foreseen by the time being to address mentioned practices/phenomena.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

No

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

No legal difficulties apparently exist in the public authorities decide to criminalize where necessary the identified practices/phenomena.

SWEDEN / SUEDE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

Sweden has recently undertaken a review of its bribery legislation by convening a Committee of Inquiry, which issued a report in June 2010 that formed the basis for new amendments to Sweden's bribery offences, which came into force on 1 July 2012.

The new legislation introduces two new offences and re-organizes all bribery-related offences by placing them in five sections within Chapter 10 of the Swedish Penal Code: passive bribery (section 5a); active bribery (section 5 b); gross passive or active bribery (Section 5c); trading in influence (Section 5d); and negligent financing of bribery (Section 5e).

Section 5a, the passive bribery offence, provides that "[a]nyone who is employed or performs a function and receives, agrees to receive or requests an undue advantage for the performance of his or her employment or function shall be sentenced for taking a bribe to a fine or imprisonment for at most two years."

Section 5b is the active bribery offence. It provides that "[a]nyone who gives, promises or offers an undue advantage to a person mentioned in section 5a, and under circumstances described therein, shall be sentenced for giving a bribe to a fine or imprisonment for at most two years."

The new text of the offences covers a broader range of public officials and private individuals than the previous legislation. While the previous legislation specifically defined the classes of persons who were covered, the new legislation broadly prohibits bribery in respect of "anyone who is employed or performs a function". Individuals who "owe a duty to a constituency" but are not employed would also be covered. Thus the phrase "for the performance of his or her employment function" also covers the employee's non-performance of duties within his or her scope of responsibility. It should further be noted that the new bribery offence contains a specific provision applying to contestants and officials in sports and other competitions. Beyond the scope of the new legislation the sanctions available within the sports movement to take measures against bribery, for example suspension, also protect the gaming market and sports movement against organized crime which engages in betting on the outcome of fixed matches.

Section 5c retains the offence of gross bribery, which also existed in Sweden's previous legislation. As in the previous legislation, gross bribery carries a sentence of between six months and six years. The new legislation, however, provides factors to determine whether an offence is "gross bribery", such as "whether the offence constituted a misuse or an infringement on a function entailing particular responsibility, involved a substantial amount of money or formed part of criminal activities carried out systematically or on a large scale or whether the offence was otherwise of a particularly dangerous nature". Each factor could independently contribute to a finding that misconduct constituted gross bribery; for instance, gross bribery could entail a small bribe to an official with significant responsibilities. "A substantial amount of money" could refer either to the amount of the bribe or the relative amount of gain that was expected from the bribe.

The amendments contain two new offences: trading in influence and negligent financing of bribery. The trading in influence statute criminalizes the receipt of an undue advantage for the purpose of influencing a third person (e.g. a foreign public official) in connection with the exercise of public authority or a public procurement. The provision on negligent financing of bribery is not relevant for the purposes covered by the present questionnaire.

The consequence of the new legislation is that, in essence, all corrupt practices/phenomena in relation to anyone who is employed or performs a function are covered by the legal provisions.

Needless to say, there is nothing to prevent the sports movement and/or betting companies to take measures of a self-regulatory character in order to strengthen even further the protection against manipulation of sports results.

2. Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?

No, the legislation has very recently been revised and is deemed to be comprehensive. Thus, there is no need for legislative measures.

3. Are you aware of any studies on these practices/phenomena that have been carried out in your country?

We are not aware of any national studies of the kind.

4. What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?

Corrupt practices are built on an understanding between the active and the passive part of a deal. It is by nature hidden and hard to detect. The mischief can be serious yet hard to detect for those not immediately involved.

SWITZERLAND / SUISSE

1. *Quels phénomènes ou pratiques frauduleux/frauduleuses éventuellement observé(e)s dans les secteurs à but non lucratif (tels que le sport, l'aide humanitaire, la politique, les syndicats, etc.) ne sont pas couvert(e)s par les dispositions juridiques existantes sur la corruption dans votre pays ?*

Les dispositions suisses sur la corruption privée sont limitées dans leur champ d'application, principalement par deux restrictions. D'une part, la corruption doit viser un acte en relation avec une activité professionnelle ou commerciale et, d'autre part, la corruption doit constituer un comportement de concurrence déloyale (art. 4a Loi fédérale contre la concurrence déloyale, RS 241). La question de savoir dans quelles circonstances les organisations sportives peuvent tomber sous le coup de la deuxième condition, est particulièrement discutée en Suisse, sans qu'une réponse claire ne se dégage.

2. *A-t-on pour projet ou pour intention, dans votre pays, de prendre des mesures pour réagir à ces pratiques/phénomènes et remédier à d'éventuels vides juridiques en la matière ?*

Le gouvernement suisse a décidé d'entamer des travaux législatifs dans le cadre de la mise en œuvre des recommandations du GRECO (3e cycle). Ces travaux doivent notamment déterminer comment clarifier la portée de la norme sur la corruption privée.

3. *Avez-vous connaissance de la conduite d'éventuelles études sur ces pratiques/phénomènes dans votre pays ?*

Le gouvernement suisse a adopté, en date du 7 novembre 2012, un rapport intitulé « Lutte contre la corruption et les matchs truqués dans le sport ». Celui-ci aborde différents problèmes, notamment la corruption au sein des fédérations sportives internationales et la manipulation de résultats sportifs.

http://www.baspo.admin.ch/internet/baspo/fr/home/aktuell/bundesrat_genehmigt_korruptions_bericht.html

4. *Selon vous, quelles sont les difficultés juridiques (ressenties) pour ériger ces pratiques/phénomènes en infraction pénale ?*

A nos yeux, il est difficile d'étendre la portée de la norme incriminant la corruption privée tout en évitant qu'elle ne porte atteinte à la liberté et à la vie privée des citoyens, dans des situations où il n'existe pas de nécessité de légiférer (principe de proportionnalité). Au vu des différents travaux en cours au sein du Conseil de l'Europe, une difficulté réside également dans la nécessité de bien coordonner ces différents travaux, en gardant ce principe de proportionnalité à l'esprit, afin de trouver une solution adéquate et adaptée aux spécificités du problème en cause.

UNITED KINGDOM / ROYAUME-UNI

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

Bribery in non-profit sectors is covered by the current UK criminal law – the Bribery Act 2010. By virtue of section 3 (2) the general offences at section 1 (bribing another person) and section 2 (being bribed) apply to “any function of a public nature, any activity connected with business, any activity performed in the course of a person’s employment,” and “any activity performed by or on behalf of a body of persons (whether corporate or unincorporated”.

In addition, section 42 of the Gambling Act 2005 makes it an offence to cheat at gambling or do anything to enable or assist another person to cheat at gambling. Agreeing with others to pursue a course of conduct that would amount to the commission of an offence by any of the group amounts to conspiracy to commit that offence under section 1(1) of the Criminal Law Act 1977.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

Not as regards the criminal law.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

We are not aware of studies into possible legal lacunae related to corrupt practices in non-profit sectors not covered by the existing legal provisions on bribery in the UK.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

Ensuring the criminal law possesses clarity and certainty while also providing a comprehensive and all embracing legal framework.