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responsible for Sport

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**FEASIBILITY STUDY ON A POSSIBLE LEGAL  
INSTRUMENT ON THE INTEGRITY OF SPORT  
AGAINST MANIPULATION OF RESULTS**

**Background Paper and Draft Resolution**

prepared by

## I. Background

### 1. CM Recommendation

On 28 September 2011, the Committee of Ministers of the Council of Europe (hereinafter CoE) adopted Recommendation CM/Rec(2011)10 on “Promotion of the integrity of sport against manipulation of results, notably match fixing”. Following this recommendation, the Secretariat of the Enlarged Partial Agreement on Sport (EPAS) of the CoE was invited to prepare a feasibility study on the possible drafting of a legal instrument on match fixing.<sup>1</sup>

### 2. Secretariat document, prepared with the support of independent experts, to be laid before the ministerial meeting

The EPAS Secretariat prepared a draft study with the support of external experts, for consideration at the 12th Conference of Ministers responsible for Sport. The study is based on the reports and documents prepared and collected as background information for the preparation of Recommendation CM/Rec(2011)10. The definitions approved in the Guidelines appended to Recommendation CM/Rec(2011)10 also apply in the present paper. The study was prepared by the EPAS secretariat with experts including Mr Drago Kos, former Chair of the Group of States against corruption (GRECO), as well as Mr Philippe de Koster, General Prosecutor and Vice-President of the Financial Investigation Unit of Belgium. Complementary consultations were also held with public authorities in charge of sport, representatives of the sports movement, regulatory authorities for the betting market, betting operators and the secretariat of GRECO and the European Committee on Crime Problems (CDPC).

### 3. Consultation with CDPC

In this context, CDPC was asked to contribute to this feasibility study in respect of the part related to criminal law issues, with the exception of corruption and money-laundering aspects. A survey was conducted by CDPC to identify the relevant provisions of criminal law in CoE member states (see document CDPC (2012) 1 Final) and the former Chair of CDPC, Mr Hans Holger Herrfeld, took part in the work of considering these criminal law provisions.

### 4. Aim of the study

The aim of the study is to consider the relevance of an international legal instrument for strengthening and developing the rules against manipulation of sport results and establishing sustainable co-operation amongst the stakeholders concerned. The term “legal instrument” may cover either a legally binding instrument, such as a convention (a new one or an additional protocol to an existing one), or a legally non-binding instrument, such as a recommendation to member states. As Recommendation CM/Rec(2011)10 was finalised, it appeared that some states were in favour of a feasibility study on a new convention, while other states wished to keep open other standard-setting scenarios, without focusing solely and necessarily on a possible convention. The present study thus considers, for every function expected of a new instrument, the comparative advantages and disadvantages of a legally binding instrument and whether another instrument might fulfil a similar function.

## II. Introductory remarks

### 5. Corruption scandals in sport

Over the last few years it has been proven on many occasions that sport is not immune from certain types of behaviour, which always attract negative attention and sometimes end up in the criminal courts. The situation has changed. Several cases of match fixing in Europe, mainly associated with soccer, recently attracted the attention not only of soccer fans but also of the general public. Cases like the ones linked with referee Hoyzer (2005, Germany), “Calciopoli” (2006, Italy) or the “Bochum case” (2009, Germany) proved that betting syndicates are extremely powerful in manipulating the results of soccer matches and that firm measures are needed to prevent them from achieving their aims. They also proved that fighting this scourge cannot be left to the sports movement alone.

### 6. Development of betting activities

There have been cases of manipulating sports results ever since the earliest days of sport: in the year 332 BC, Calippus of Athens was found to have bribed his rivals in the pentathlon and the

<sup>1</sup> According to Recommendation CM/Rec(2011)10, adopted by the Council of Europe on 28 September 2011, the Committee of Ministers: “Invites EPAS, where appropriate, in co-operation with other relevant national and international bodies: ... to carry out a feasibility study, in co-operation with the other concerned bodies, on the basis of this recommendation, on a possible international legal instrument that covers all aspects of prevention and the combat against the manipulation of sports results.”

Athenians were obliged to pay a fine. Modern-day sports have suffered from the same malpractices, but the reason why the number of result-fixing scandals has risen exponentially since the beginning of the new millennium is undoubtedly the expansion of the global sports betting market, and in particular of on-line betting. The gross gaming revenue of sports betting worldwide rose from €6.5 to 19 billion between 2000 and 2010.<sup>2</sup> In this context, the bonuses paid to athletes in certain international competitions, and indeed the total budget for the organisation of these competitions, represent a tiny fraction of the proceeds from bets placed on these competitions. This increase is not merely quantitative; in parallel there has been a globalisation of the betting market, making live betting possible on sport events happening in other areas of the world, with – sometimes illegal – operators located in third countries and who often do not even have any connection with the competition organisers. The FATF report<sup>3</sup> has emphasised the risks of this. The emergence of the digital society has spawned online activities which take no account of geographical distances and exploit any legal loopholes in respect of new activities. The exact role played by the growth of the betting market in exacerbating the risk of fraud is a controversial issue<sup>4</sup> but two elements are widely acknowledged: the proliferation of different forms of betting, proposed without prior consultation of the sports movement or regulators, has created types of bets which are easier to manipulate. Moreover, the development of an important illegal market – more than a third of the world market<sup>5</sup> – which gives gamblers a very high payout (generally above 90%) has attracted criminal groups, either interested in betting for the purpose of money laundering, or in manipulating the sports events on which bets are placed.

#### 7. Global issue

Modern sport operates internationally, and sports competitions are broadcast all over the world. The most prestigious national and regional sports competitions attract a global audience, involving substantial incomes from broadcasting rights at worldwide level. The labour market in top sport is also highly globalised. For instance, *the market for professional soccer players is, by far, the most globalised labour market*<sup>6</sup>. Major clubs and leagues have developed into profit-making companies. These companies attract important funding from global finance, even though some structural and cultural weaknesses still persist in the governance of the sports sector<sup>7</sup>.

Moreover, as acknowledged by several official studies<sup>8</sup> or reports and illustrated by the investigative journalist Declan Hill<sup>9</sup>, the manipulation of sports results is very often connected with activities of organised transnational crime. Match fixing cases involving organised crime have touched most European countries, including wealthy countries with high standards of integrity. Therefore, the fight against corruption in sport, and in particular the manipulation of sports results, is a problem of global proportions: it affects every country and constitutes a direct threat not only to the ethics of sport, but also to public order and the rule of law.

#### 8. Legislative loopholes

Important features of corruption in sport are already covered by the existing conventions on corruption or organised crime<sup>10</sup>. Nevertheless, answers to the following questions still have to be found: given that sport is part of the private sector and that corruption is mostly prosecuted as a business offence, how can we make sure that anti-corruption rules cover all forms of sports activity, regardless of the professional status of athletes or their competitive level? Should betting on pre-fixed matches be criminalised, and if so, how? How can trading in influence be made a criminal offence in sport? Finally, some attention will have to be paid to the kinds of evidence needed and the penalties applicable. Although manipulation of sport results is prosecuted in principle under general legislation, there may be loopholes in the existing laws.

<sup>2</sup> Introduction to the sports betting market - EPAS (2011) 19rev2.

<sup>3</sup> OECD/FATF (Financial Action Task Force), "Money Laundering through the Football Sector", July 2009.

<sup>4</sup> GORSE Samantha & Prof. CHADWICK Simon, "The Prevalence of Corruption in International Sport - A Statistical Analysis", Centre for the International Business of Sport, Coventry University Business School (Report prepared for the Remote Gambling Association and their Partners, the European Gaming and Betting Association and the European Sports Security Association), 2011.

<sup>5</sup> H2 Gambling Capital (<http://www.h2gc.com>), "The Global Addressable eGaming market for Most Operators is Actually €13bn not €23bn, Why?" (19-Feb-2011)

<sup>6</sup> MILANOVIĆ Branko, "The World at Play. Soccer Takes on Globalization", YaleGlobal online, 15 June 2010.

<sup>7</sup> BURES Radim (Transparency International, Czech Republic), "Why sport is so immune to corruption?", EPAS(2008)INF10rev.

<sup>8</sup> KOS Drago, "Conclusions following analysis of match fixing cases", EPAS (2011) 3.

<sup>9</sup> HILL Declan, "The Fix: Soccer and Organized Crime", Publisher: McClelland & Stewart, 2008.

<sup>10</sup> KOS Drago, "Common Standards on Sports Integrity in Relation to Sports Betting for all International Sports Federations and Organisations", EPAS (2011) INF 10.

## 9. Transnational cooperation

Due to the transnational dimension of sport results manipulation and the need to combat the criminal and other acts related to this, international co-operation needs to be strengthened.

A broad international mobilisation of governments has not yet taken place, except on the European continent where governments of the Council of Europe states adopted a comprehensive recommendation and the European Union institutions plan further steps in the framework of various sectoral policies (sport<sup>11</sup>, fighting corruption<sup>12</sup> and online-gambling<sup>13</sup>). However, despite these European initiatives, there are discrepancies among states with regard to their domestic initiatives and there is no unanimous commitment on further steps at international level. Outside Europe, Australia has put it high on its political agenda and is developing a federal policy, and some Asian countries have expressed an interest in the issue. The United Nations Office on Drugs and Crime (UNODC) is considering initiating worldwide co-operation among the authorities in charge of fighting crime (e.g. studies on good practice, exchange of experience). Specialised organisations on judicial or law-enforcement co-operation (Eurojust, Interpol) are committed to providing adequate back-up in operational co-operation on sports integrity issues. However, the effectiveness of their role relies on the existence of appropriate national legal provisions and the responsiveness of national authorities.

Within the sports movement, major umbrella organisations have launched significant initiatives in order to promote harmonisation of sports federations' regulations and to offer training programmes (SportAccord) or develop joint initiatives against illegal betting with governments, international organisations and betting operators (International Olympic Committee - IOC). Within the sports movement there are also important discrepancies. Leading sports organisations are those of football, tennis, cricket and rugby, as well as the American professional leagues.

The betting industry is split into two main groups: the private betting operators and the lotteries, which do not automatically work together on issues of common concern such as integrity. Representatives of the betting operators have been constructively involved in CoE, IOC or European Commission processes, but the most significant initiatives in the sector (educational programmes, betting monitoring system and guidelines on sport betting) were adopted in parallel by lotteries and by private betting operators' organisations.

Despite the large number of stakeholders and organisations involved in these policy developments, it should be emphasised that there is good co-operation, consensus on the conclusions reached and no overlap between the various initiatives. A key challenge is now to establish these co-operative forums and processes involving different kind of actors in a way that is sustainable .

## 10. Harmonisation

At present there is little legal harmonisation either on preventing and fighting competition-fixing, organising the betting market, or using anti-corruption instruments in the field of sport.

However, these areas are rapidly developing in European countries, driven by a strong impetus to put the "match fixing" issue on the political agenda, by the growth of the betting sector and by new national or international anti-corruption strategies. Nowadays, some political or legal harmonisation is needed to ensure an effective response to manipulation of sports results. Recommendation CM/Rec(2011)10 is the most detailed international standard addressing the issue and lays down a comprehensive set of measures for combating manipulation. The present study seeks to identify which of these measures should be more closely defined or strengthened and which instrument may be suitable for achieving the end in view.

## III. **Scope of a possible instrument / Pros and cons of a legally binding instrument**

### 11. Scope

According to Recommendation CM/Rec(2011)10, EPAS was invited

"where appropriate, in co-operation with other relevant national and international bodies:

[...];

- to carry out a feasibility study, in co-operation with the other concerned bodies, on the basis of this recommendation, on a possible international legal instrument that covers all aspects of prevention and the combat against the manipulation of sports results;

<sup>11</sup> European Commission, "Developing the European Dimension in Sport" (Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee), Brussels, 18.1.2011 COM(2011) 12 final.

<sup>12</sup> European Commission, "Fighting Corruption in the EU" (Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee), Brussels, 6.6.2011 COM(2011) 308 final.

<sup>13</sup> European Commission Green Paper on on-line gambling in the Internal Market - EPAS (2011) INF 14.

- to provide a platform of exchange and co-operation for governments, sports movement and betting operators, on the issue of integrity of sport, to explore the feasibility of establishing a working structure and to report to the next ministerial conference;
- to explore possibilities to use the Council of Europe initiatives as a starting point towards a global response to the issue; [...]"

Concerning the scope of the possible legal instrument, the recommendation specified that it should be based on the recommendation. However, some assumptions and decisions reached early on in the drafting of the recommendation need to be revisited and possibly reconsidered now.

The recommendation sought to address the issue of the integrity of sport, threatened by the unfair manipulation of results. This approach covers all manipulation of sports results, whether connected with betting or not, as these manipulations jeopardise the rule of law, public order and the ethics of sport. This will remain the main issue under consideration in this study.

Other kinds of corruption in sport, in particular in the governance of sports bodies, which were previously addressed in the resolution of the 11th Council of Europe Conference of Ministers responsible for Sport (Athens 2008), were excluded from the scope of CM/Rec(2011)10. Political awareness of such issues increased recently as some recent cases broke in the press, and some Council of Europe member states or experts called for this issue to be included in the work on match fixing. Our study will therefore consider, as a secondary concern, how this issue might be dealt with further.

When any issue related to betting is discussed, the controversial issue of opening up national markets to competition is often mentioned, notably within the European Union. The present study does not address this issue, which is not relevant to its purpose. Measures to promote integrity can apply both to lotteries operating in a monopoly market or to licensed bookmakers operating in a regulated market of non-exclusive licences. While the opening up of the betting market remains outside the scope of the present study, we need to define some minimum requirements that the regulators must impose to protect the integrity of sport. Other issues of concern for the regulators such as addiction and the scrutiny of operators are also ignored by the present study. Action against illegal betting may be addressed where it has significance for the defence of integrity.

The following sections present the main functions that still need to be consolidated, in order to strengthen the fight against manipulation of sport results in line with recommendation CM/Rec(2011)10. The pros and cons of fulfilling these functions through a binding legal instrument (convention), rather than decisions and non-binding legal rules, are also discussed.

## 12. Co-operation platform

The development of projects, rules and policy initiatives to combat the manipulation of results has highlighted the need for partnerships and networking. In preparing the recommendation, EPAS decided to involve a trio of players, namely public authorities (representing various areas of responsibility), the sports movement and betting operators. These networks were involved at different stages: preparing the Council of Europe recommendation, the current IOC process, and the activities of SportAccord to draw up guidelines for the international federations. Similar networks should also be established at national level.

More specific details need to be given about the “public authority” component. At the very least it should encompass the authorities responsible for sport, the authorities responsible for fighting crime – corruption in particular – and those which regulate sports betting. It is also important that the authorities responsible for combating cybercrime and money laundering and the data protection authorities should be involved in certain tasks.

Most tasks concern the public authorities, either because they fall under the sovereign powers of the state (the fight against crime) or because the state has a duty to supervise or regulate independent third-party stakeholders (betting operators, sports organisations), or because the state has the moral authority, trust and legal status to facilitate co-operation between private organisations (for example, ensuring information exchange and dialogue between betting operators and sports organisations).

CM Recommendation CM/Rec(2011)10 therefore calls for co-ordination at national level to be carried out by the public authorities and invites EPAS to provide a platform of exchange and co-operation for governments, the sports movement and betting operators, on the issue of integrity of sport, to explore the feasibility of establishing a working structure; it is therefore suggested, *mutatis mutandis*, that an

international co-ordination and co-operation platform be established on an intergovernmental basis, in order to ensure cooperation between the courts, the police forces and administrative authorities of different states but also between public authorities and private entities such as international and national sports bodies and betting operator organisations. This does not in any way preclude governments from taking part in parallel in complementary initiatives by other players, for instance IOC.

The structure in question should be open to all interested states, including non-European states, since the intention is to extend the impetus to other regions in the world. At this stage, and even if the circle of members were to expand over time, it seems too early to seek to set up a universal body immediately.

This platform should possess a degree of certainty in terms of resources and have an institutional base so that governments can deal appropriately with other partners as the public interest demands. It should also provide for close co-operation with other relevant international organisations which are also involved in similar processes (Interpol, UNODC, European Union, etc).

Such a platform could be set up within EPAS, building on the co-ordination meetings which were part of the preparation process for the Recommendation. This kind of solution could easily be implemented, with the agreement of the EPAS member states and could be incorporated into the EPAS Statute in order to ensure its sustainability; this presupposes that EPAS member states agree to allocate part of the EPAS budget to this task on a long-term basis, which would mean either a reduction in their margin for manoeuvre, an increase in contributions or the need to attract new resources (new members, new sources of funding).

The alternative would be to establish the platform as the convention committee of an international convention. The convention option would take longer and be more complex to implement (agreement on the text of a draft convention), but would offer a better guarantee of sustainability. A convention committee that was independent of EPAS both financially and in terms of its rules would be consistent with the model for administering current sports conventions (Fight against spectator violence and Anti-doping). Nonetheless, it should be noted that any financing of its activities out of the Council of Europe's ordinary budget would require the agreement of the Committee of Ministers. Otherwise, consideration should be given during the project negotiations to independent financing (e.g. special funds) or financing by a partial agreement.

Whichever solution is adopted, the question of financing will be sensitive given the financial crisis in the public sector.

In addition, the co-operation platform should as far as possible be supported by a modest staff and should draw on existing committees. In the field of fighting crime and corruption, CDPC and GRECO would appear to be appropriate partners. Sports policy and dialogue with the sports movement can be guided perfectly well by the EPAS Governing Board and EPAS Consultative Committee. Lastly, as regards regulating the betting market, it would be necessary to establish and/or consolidate a network of betting operators to facilitate closer co-operation with these authorities (see box below).

#### Establishment of a network of betting regulators

This initiative can be taken as an autonomous process, without consideration for the development of a new legal instrument. EPAS is ready to host an initial meeting to be attended by a delegation from each state party to the European Cultural Convention and to consider together with the gaming market regulators how best to set up and enlarge such a network in a lasting way. In addition to the anticipated tasks involved in the fight against the manipulation of results, this network of gaming regulators could also draw up its own agenda and strengthen co-operation in respect of other issues (addiction, scrutiny of betting operators, taxation, etc).

This capacity for international coordination on the regulation of betting, based on close consultations between betting regulators reflects an expectation expressed by the European Commission in the framework of the consultations on the Commission's Green Paper and the wish expressed by the IOC for the establishment of an international network of sports betting regulators<sup>14</sup> to promote greater integration of fraud detection systems and exchanges of information. Drawing on the model of the financial intelligence units in the field of the fight against money-laundering (see CETS No. 198), a pan-European network of betting regulators could not only facilitate international co-operation, but also make it possible to envisage the emergence of a global network modelled on the Egmont Group<sup>15</sup>, also in the field of the fight against money-laundering.

### 13. Basic principles on the organisation of the betting market

A new legal instrument could also clarify certain principles relating to the offer of sports bets:

- a) with regard to co-ordinating the organisation of sports bets, states should be asked to clarify what offers are lawful in their country, with due regard for a state's right to opt for a monopoly, a market with a limited number of licensed operators, a market open to licensed operators in third countries, or indeed total prohibition;
- b) states should also be asked to identify the regulatory authority for their gaming market, or in the case of monopolies, to identify the authority responsible for drawing up or monitoring implementation of the legal framework applicable to the monopoly operator;
- c) the authorities in charge of regulating the betting market should be empowered, where appropriate, to provide the judiciary and law enforcement authorities with information enabling them to initiate the required proceedings at the appropriate time.
- d) These regulators should be invited to participate in the co-ordination network referred to in section 12;
- e) in addition, the betting market regulators would be invited to become involved in implementation of the fraud prevention measures mentioned in recommendation CM/Rec(2011)10 (manipulation of sport results, but also conflicts of interest and misuse of insider information). To this end, the co-ordination platform referred to in section 12 should be able to co-ordinate the implementation of some technical provisions contained in the Recommendation or its Guidelines, which must be specified and updated regularly. In this way, a more precise definition of what are viewed as "more risky" bets within the meaning of paragraph 45.3 of the Guidelines appended to Recommendation CM/Rec(2011)10 may be very useful in strengthening preventive action. Similarly, a procedure for information exchange in the context of betting monitoring systems – providing guarantees of non-disclosure and data processing confidentiality – would strengthen these systems.

The drafting of general principles on preventing manipulations linked to sports betting, and the establishment of a network of betting regulators could doubtless be done on the basis of decisions and recommendations that are not legally binding. By contrast, a binding standard-setting basis (a convention) would make for more effective harmonisation of processes and some technical regulations, because powers would be delegated to the convention committee. The co-ordination platform, if set up as a convention committee, could even adopt decisions on specific issues that were legally binding on the states parties to the convention. This practice would be similar to the one followed by the Anti-Doping Convention's Committee, which each year adopts an updated list of prohibited substances.

### 14. Action against illegal betting

It would also be necessary for the network of betting regulators to be involved in studying and co-ordinating measures to prohibit the unlawful offer of bets. Even though none of the measures currently specified in paragraph 24 of the Guidelines on their own make it possible to curb the

<sup>14</sup> International Olympic Committee, "IOC's fight against irregular betting in sport moves to implementation phase", Press Release of 2 February 2012.

<sup>15</sup> The Egmont Group is an international forum set up in 1995 at the initiative of the CTIF (Belgium) and FinCen (USA) which brings together the agencies worldwide which are responsible for receiving and dealing with reports of suspected money-laundering and financing of terrorism. Its main objectives include developing international co-operation through information exchange and developing a single operational approach to cases.

unlawful offer of bets, a combination of certain actions has already shown itself to be effective,<sup>16</sup> and strengthening international co-operation should make it possible to restrict the practice. It would be unacceptable, in parallel with the strengthening of a framework of preventive measures and control of licensed operators, for other operators to be able to offer their services with impunity, disregarding this framework. Lastly, within the framework of a new legal instrument against manipulations, some co-ordination of the fight against illegal betting will be based on an analysis of the risks to public order and sports integrity.

The negotiation of a convention would make it possible to consolidate this list of measures to curb the unlawful offer of bets. It may also make it possible to establish how these measures need to be implemented in order to protect fundamental rights. Furthermore, the drafting of a convention would provide an opportunity to consider introducing a principle whereby a betting operator can operate in a state party (or apply for a licence to do so) only if the operator's activities have not been the subject of any conviction in another state party.

Action against illegal betting could be improved by closer co-ordination, in particular amongst betting regulators, regardless of the formal basis or decision establishing the network (e.g. informal network, EPAS working group, sub-committee reporting to the Committee of Ministers, etc.) Nonetheless, coordination of the fight against illegal betting under a convention would make it possible to overcome certain legal obstacles undermining the implementation of measures to combat the unlawful offer of bets and could help strengthen the range of available measures by means of a principle of mutual recognition of operating bans on operators who have broken the integrity rules in other states parties to the convention.

#### 15. Harmonisation of preventive measures

Preventive measures by sports organisations, betting operators and public authorities have to be further developed and co-ordinated, enabling them to jointly recognise, identify and prevent manipulation of sports results.

Some monitoring of the existing preventive provisions of sections D to F of the Guidelines appended to recommendation CM/Rec(2011)10, and the organisation of work to help their implementation is possible without any convention, as part of the EPAS Programme of Activities. However, the adoption or endorsement of some of these preventive measures as provisions of a convention would ensure more thorough implementation and enable possible legal obstacles to be removed: in cases where public authorities are expected to encourage sports organisations or betting operators to adopt specific internal regulations, enforce regulations or endorse sanctions by sports organisations that might be challenged in the civil courts, the legal harmonisation resulting from ratification of a treaty will ensure that these measures are legal. States expect the sports movement and betting operators to harmonise some preventive measures at international level; the adoption of a legally binding standard would help to offer a guarantee that these harmonised preventive measures are consistent with their national laws.

#### 16. Harmonisation of the (criminal and administrative) law and facilitating the harmonisation of disciplinary rules

The general body of laws, already applicable to bribery and trading in influence offences, as well as extortion and blackmail, can cover many instances of match fixing, provided some loopholes, mentioned in section 8, are plugged. Some additional challenges have to be solved: the problem of the existing non-mandatory nature of some criminal offences (e.g. trading in influence), the elements of evidence required to prosecute some offences or the weakness of the penalty imposed can undermine the whole idea of effective action against match fixing.

Moreover, in the absence of a harmonised legal armoury against fraud, a future legal instrument, drawing inspiration from national laws, might develop a new definition to ensure that in the area of sport at least a co-ordinated approach to fighting fraud will be achieved. Some states or organisations are even requesting a step further in harmonisation, advocating a specialised criminal status for manipulation or sports fraud. Such offences have been adopted by a number of states, but may be difficult to introduce for a variety of reasons: the definition of new criminal offences is generally approached restrictively by criminal law specialists, who prefer a general criminal status applicable to various settings; moreover, the development of any sports-related legislation is very sensitive in some countries, where the view is that sport should not be governed by specifically public laws.

<sup>16</sup> Enlarged Partial Agreement on Sport (EPAS), "States' Behaviour Vis-A-Vis Illegal Sports Betting Sites", Information Document Prepared by the Secretariat, EPAS(2011)20



Therefore, it seems preferable to seek to plug the loopholes in existing general rules which sometimes restrict their scope, for instance, to professional sport or to sports events which are the subject of gambling. A new legal instrument could identify which behaviours should be prosecuted, without seeking specialised criminal rules for sport.

In practice, athletes and their entourages are not only exposed to active and passive bribery and trading in influence, but also to extortion or blackmail. It should be made clear that such acts should be prosecuted under existing national solutions for those criminal offences and/or the general provisions of criminal law on self-defence and *vis maior* and/or event-specific rules. Finally, a new legal instrument can include the usual references to participatory acts, liability of legal persons, money laundering, whistleblowers, sanctions, organised crime, etc, which will have to be attached to the core provisions applicable to the manipulation of sports results.

Moreover, there is a need to ensure that administrative law, where applicable, supports and does not preclude the implementation of preventive measures mentioned in recommendation CM/Rec(2011)10. Lastly, a new instrument can state the goals to be achieved by the disciplinary rules of respective interlocutors and maybe mention some possible solutions.

Non-binding instruments can promote the harmonisation of legislation. Indeed, recommendation CM/Rec(2011)10 endeavours to achieve a measure of legal harmonisation. Such harmonisation may be further developed by other recommendations. However, legally binding instruments make for far more effective legislative harmonisation. CM/Rec(2011)10 includes references to rules that are, where appropriate, enforceable by the sports movement. Thus, it is all the more important that these rules, the means to implement them and decisions or sanctions taken on the basis of them are fully lawful. Concerning administrative law, a legally binding instrument would go further than the present recommendation in ensuring that measures taken by private-sector players were consistent with other relevant legislation (e.g. on data protection, free movement of workers, etc). Lastly, the transnational nature of the phenomenon of sports results manipulation means that these cases may possibly be investigated and prosecuted at international level. An internationally binding instrument clarifying the behaviours to be considered as offences would facilitate judicial co-operation among state parties.

#### 17. Follow-up

It is obvious that it is not enough to adopt international legal instruments; there must also be scrutiny of how they are implemented. In spite of detailed preparatory work, and explanatory texts, some countries still have difficulties in implementing such instruments. Sometimes understanding their terminology is a problem and sometimes a lack of resources for their implementation may cause significant delays to planned activities.

To address this problem, the international community has established follow-up mechanisms to ensure the co-ordinated and timely implementation of international standards. This should also be the case with the measures agreed upon in CM/Rec(2011)10 to fight manipulation of sports results, taking into account its specificities, i.e. the combination of preventive measures sanctions by three types of interlocutors, which are not even all public-sector bodies. This clearly calls for a carefully structured follow-up mechanism and, even more importantly, for proper definition of the nature and scope of the follow-up measures envisaged.

Such a mechanism would monitor the standards adopted and the measures taken in every state, and would enable data on ongoing cases to be shared and trends in the phenomenon to be identified. Thus, the mechanisms would act as an observatory of sports integrity, allowing standard-setting and assistance initiatives to be guided by evidence-based data.

The pros and cons of establishing a follow-up mechanism by means of a convention are quite similar to those applicable to the co-ordination platform. Although EPAS could include follow-up within its Programme of Activities, it would be more sustainably formalised in a convention. A convention would, moreover, provide a more adequate basis for a monitoring mechanism, as it would not be exclusively confined to one sector – in this case intergovernmental cooperation on sports policy – and it could involve in equal measure expertise on sport, the betting market and action against corruption.

Sections IV to VIII describe issues to be addressed in a possible convention.

#### **IV. Prevention**

##### **18. Domestic co-ordination**

It is very important to ensure that all organisations tasked nationally with preventing and combating the manipulation of results co-ordinate their activities towards the same goal. Public authorities should act as initiators and co-ordinators, inviting all other actors to take part and, if possible, identify measures to combat the manipulation of sports results and means by which these can be implemented and monitored. While sports organisations and betting operators have a specific role in awareness-raising, education and information-sharing, the public authorities, in addition to their sovereign powers, might additionally motivate the non-governmental sector through financial grants, conditional on the effective planning and implementation of measures against match fixing.

The substance of paragraphs 5 to 8 of the Guidelines should be considered for inclusion in a convention.

##### **19. Promotion and support of measures to be taken by the sports movement**

The anticipated functions of the sport movement and the principles of its regulations and procedures, should be defined in the convention. However, specific measures such as those described in paragraphs 28 to 30 of the Guidelines could be listed in an appendix, which could be amended, in consultation with representatives of the sports movement. This should be the case for measures administered autonomously by the sports movement. Where certain measures require recognition by the public authorities in order to be validated (e.g. paragraph 28.4 of the Guidelines) or are necessary for the performance of functions relating to the public authorities or other players (e.g. paragraph 28.6 of the Guidelines), consideration should be given to including them in the substantive provisions of the convention.

##### **20. Setting up a framework for the betting market**

In order to uphold the integrity of sport, some duties and responsibilities of betting market regulators should be spelled out in the convention.

These authorities have notably a key role to play in ensuring information exchange between the sports movement and betting operators, as part of the various betting monitoring systems.

Consideration should be given to inserting a reference to information-sharing between different betting monitoring systems or ultimately the establishment of a consolidated system.

Regulators also have a role in co-ordinating the rules applicable to betting operators and a duty to monitor and enforce application of these rules. Lastly, they should have a responsibility to co-ordinate and initiate measures to combat unlawful offers of bets. They should also co-operate with the financial investigation authorities in order to ensure that the fight against money laundering covers the betting sector in an sufficiently effective way.

##### **21. Promotion of measures to be taken by betting operators**

The approach of a convention containing provisions relating to betting operators should be similar to that adopted by the sports movement. A convention should not list specific measures applicable to betting operators and those expected to be based primarily on self-regulation, but rather should define the responsibilities and duties of betting operators to uphold the integrity of sport. A list of these measures could be appended to the convention, in a technical standard which could be amended by the convention committee in consultation with the betting operators and the regulators. By contrast, the duties and measures to be taken by betting operators, which are necessary for the carrying out of tasks falling to other stakeholders, should be specified in the provisions of the convention itself. Examples are the obligation to share the information required for the operation of betting monitoring systems or for reporting anomalies (Guidelines paragraphs 45.6, 45.7, 37, 38), and the obligation for prior approval of betting on sporting events to be sought from the organisers (paragraph 20).

## V. International co-operation

### 22. Public authorities – sport

The principles of co-operation between the public authorities and the sports movement may be defined in a convention.

The practical arrangements for implementation of these principles could be discussed in greater detail under the auspices of EPAS, at the meeting between the EPAS Governing Board and the EPAS Consultative Committee. Some recognition should be given to international sports bodies as privileged partners of the judiciary, law enforcement and administrative authorities of the states parties. Procedures and requirements for bilateral exchange of information between judiciary or law enforcement authorities and sports disciplinary bodies may be defined in a convention. A convention could also mention the role of the IOC and SportAccord, which co-ordinate the International Sports Federation at international level.

### 23. Public authorities (betting regulators) – betting operators

The network of betting regulators referred to in the box in section 12 could be called upon to enter into dialogue with representatives of licensed betting operators in the states parties to the convention, and so to meet regularly in an enlarged forum, in order to maintain this dialogue and consult the operators' representatives on measures which could be harmonised at international level.

### 24. International co-operation between judicial or law enforcement authorities

A convention should also identify the relevant instruments that may facilitate investigation and prosecution of criminal or corrupt behaviours. The Steering Committee on Crime Problems (CDPS), as well as the Group of States against Corruption (GRECO) will be consulted to this end.

They may in particular advise on the swift use of investigative and judicial co-operation tools and notably the possible implementation of legal instruments such as:

- the 1957 Convention on Extradition (ETS No. 24) and (where applicable) the European mandate
- the 1959 Convention on Mutual Assistance in Criminal Matters (ETS No. 30)

The convention could also identify other relevant Council of Europe instruments in this sphere, such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) and the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108). Finally, although it is specific to Council of Europe member states, any action in this field should comply with the principles of the European Convention on Human Rights, even if a possible convention on match fixing were opened to non-CoE states.

### 25. Tripartite consultations

As more and more crime affecting sport in general comes to light, thought should be given to a framework for cross-cutting national and international co-operation. In practice, the effectiveness of action in any form at all depends here on the use made of all data held not only by public authorities and authorities with a public service remit, but also by private-sector players. This kind of cross-cutting co-operation is the way things are going these days, particularly in the sphere of the combating of money-laundering. The FATF has enshrined the principle in its draft recommendation 40<sup>17</sup>. Nevertheless, many legal questions remain. The answer to some of them depends on a combined application of international legal instruments, and to others it depends on extension of the principle of mutual recognition of, *inter alia*, administrative, disciplinary and other decisions by member states' various bodies.

The existence of an international convention involving various governmental competences (sport, criminal issues, fight against corruption and regulation of the betting market) and establishing co-operation with private stakeholders (sports movement and betting operators) is extremely challenging and will raise many questions. Those questions will mainly concern the Convention's aims, the meaning of the terminology used, roles of interlocutors, preservation of their independence, respect for their economic activities, etc.

Real problems and challenges with legal documents usually start with their practical implementation. So it is essential that the convention itself provides a priori for a system of regular consultations,

<sup>17</sup> See FATF/PLEN/RD(2012)2/Rev1 of 19 January 2012.

which will include all three groups of interlocutors at the national and international level. Those consultations will serve the purpose of clarifying the undertakings given by the respective stakeholders, specifying their tasks in detail, adopting joint decisions and/or opinions on open or important issues and planning the way forward. One of the best options for the format of those consultations would be an annual conference of states parties to the convention, with state party delegations comprising representatives of different fields, and even national sports representatives or betting operators. Those delegations will represent the core consulting group, but a way will also have to be found to include all other actors concerned (international sports federations, umbrella organisations of betting operators and states which are not yet parties to the convention, etc.).

Annual conferences will have to be convened by the Secretary General of the Council of Europe, and prepared with the support of a limited secretariat, drawn for instance from staff who administer the sports conventions.

The possible setting up, at a later stage, of a permanent international body for the fight against manipulation of sports results, with operational powers, is not part of the possible convention, but may be considered in due course by a conference of states parties.

## VI. Sanctions

### 26. Combination of disciplinary, administrative and criminal sanctions

Combating the crime of sports betting manipulation requires not only the development of preventive measures, but also the setting up of an efficient system of sanctions. These may be of different kinds, though they may sometimes resemble one another in nature. The broadest possible range of criminal, administrative and disciplinary sanctions should be envisaged. Imposed by authorities of different kinds, these sanctions must complement each other, whilst abiding by the prohibition of double jeopardy and applying the "*ne bis in idem*" principle of the European Convention on Human Rights<sup>18</sup>. The principle of combining sanctions of different kinds should both be enshrined and be detailed in the light of the case-law of the Strasbourg Court, bearing in mind each state's legal system. Such a potential combination nevertheless requires a definition of the role of each intervening body (judicial, administrative or private) and the protection guaranteed by each body. This would be the case in particular for misuse of insider information, that may involve a mix of disciplinary (professional or sports regulations), administrative (law on betting market) or even criminal competences. However, it raises the awkward question of the recognition of the legal force of disciplinary decisions in each state's legal system, and also in the legal system of a state other than the one within the jurisdiction of which the disciplinary authority falls. Similarly, the combining of criminal and administrative sanctions means that the appropriate type of sanction and the person concerned must be defined as accurately as possible.

### 27. Disciplinary

The principle of mutual recognition of disciplinary sanctions imposed by the disciplinary authorities of different states or international disciplinary bodies should be envisaged in order to counter the problem of the globalisation of sports betting manipulation. The absence of such mutual recognition would make it possible for an offender to commit further manipulative offences elsewhere.

### 28. Administrative

Nevertheless, whether penalties are administrative, criminal or disciplinary, they should always comprise a temporary or permanent ban, regardless of whether the legal environment is limited or more extensive.

For example, the authorities responsible for handing down criminal or administrative penalties should also be able to take measures to ban athletes involved in manipulation. These banning measures taken at national level should be part of a mutual recognition procedure in other states in order to avoid repetition of the conduct being penalised.

With regard to the organisers of unlawful or illegal bets, depending on their status, it should, where necessary, also be possible for them to be given an additional penalty of suspension or withdrawal of their licence to operate.

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<sup>18</sup> The "*ne bis in idem*" principle, as currently interpreted by the European Court in Strasbourg, prohibits the imposition of more than one punishment for the same act.

Other administrative measures may be considered, such as the closing of internet sites offering irregular bets.

### 29. Criminal law

The CDPC study<sup>19</sup> concluded that a possible future CoE convention should cover a wide set of measures to address this phenomenon rather than focus mostly on criminal law aspects. It appears that irrespective of whether or not CoE member states have chosen to introduce specific criminal law provisions on the manipulation of sports results, member states' authorities feel confident that by and large the majority of cases of such conduct can be addressed under existing criminal law provisions, be they specific provisions or the general criminal law on fraud, corruption or other types of offences. In particular, most CDPC delegations consulted and representing member states that have not introduced any such specific criminal law provisions currently see no need for them. In light of this, and considering the wide variety of possible types of conduct that may be linked to the manipulation of sports results as well as the variety of ways devised in the member states for addressing such cases, it does not appear advisable for the CoE to seek to draft specific criminal law provisions for a possible new convention in this field. However, a future convention could be complemented by a general provision requiring states parties to ensure effective criminalisation and investigation of such crimes based on applicable national law e.g. along the lines of section 13 of Recommendation CM/Rec(2011)10, and clarify the specific criminal behaviour that should be prosecuted, including criminal behaviour in the field of sport, in order to plug possible gaps in existing legislation.

In respect of criminal law, the convention would fulfil a criminological function, in highlighting emerging phenomena and identifying which existing provisions should be applicable or updated to cover these phenomena, rather than a typical criminalisation function seeking to define a new offence.

### 30. Complementary option

By way of a complement to the proposed measures for combating unfair manipulation of the results of sports events, one conceivable response to the desire to strengthen the fight against corruption in sport (cf. section 11 above) might be to broaden the Criminal Law Convention on Corruption (ETS No. 173) and the Civil Law Convention on Corruption (ETS No. 174) to include the non-commercial private sector, which would comprise the sports movement but also associations, professional organisations, trade unions, employers' organisations, political parties, etc.

An examination of the provisions of international law applicable to the combating of result manipulation<sup>20</sup> had in fact revealed that the scope of the Criminal Law Convention on Corruption (ETS No. 173) and the Civil Law Convention on Corruption (ETS No. 174) in the private sector was in principle restricted to commercial activities. So it is not certain that the activities of the sports movement are covered by national anti-corruption laws. This question was considered during preparatory work on the Criminal Law Convention on Corruption (ETS No. 173) and, at the time, the sports sector in general, along with the not-for-profit sector, was removed from the purview of these conventions.

This question could be the subject of a separate examination. To this end, it could be suggested to the Committee of Ministers of the Council of Europe that it ask the CDPC, in co-operation with GRECO, to conduct a feasibility study for an additional protocol to the Criminal Law Convention on Corruption (ETS No. 173) and/or the Civil Law Convention on Corruption (ETS No. 174), in order to establish whether such an extension of their scope would now be conceivable.

In itself, this measure would not adequately remedy the shortcomings of the legislation applicable to cases of manipulation of sports events results, for this manipulation, whilst it certainly may come under the heading of corruption or trading in influence, may also be a matter of extortion, blackmail, fraud or insider trading. As such, it could be considered to be a complementary process, but one distinct from the present process of developing a new instrument to combat match fixing.

### 31. Jurisdiction

In respect of jurisdiction, it may be useful to specify that parties to a convention must exercise jurisdiction on the basis of the territoriality and the active nationality principles and to provide that in

<sup>19</sup> CDPC(2012)1 final.

<sup>20</sup> Enlarged Partial Agreement on Sport, Provisions of international legal instruments on treating bribery in sport as a crime - EPAS (2011) 23.

cases where more than one state claims jurisdiction authorities should consult each other to establish which party should be in charge of prosecution. It should not be forgotten either that the offences the convention would be addressing are partly committed in the virtual world; it would therefore be necessary, in the convention, to envisage some tweaking of the principle of territoriality and active nationality. This should also allow the jurisdiction or jurisdictions best placed to act against the offences in question to be chosen, bearing in mind the possible interaction of judicial or law enforcement authorities and disciplinary bodies operating under different legal systems.

## **VII. Law enforcement**

### **32. Investigation**

The global environment of sports betting demands a quick technical response requiring the involvement of central bodies. Thus, the identification of co-ordination units should be considered to collect and centralise information held by both the sports movements and betting operators. The skills and experience of entities such as those in charge of hooliganism, financial investigation units, betting regulators and units in charge of cybercrime should be analysed, adapted and used, if necessary, to fight against the manipulation of sports results. The creation of specific investigation entities does not seem to be necessary provided that a broad exchange of information can take place in an appropriate legal environment.

### **33. Cybercrime**

Exploitation of the virtual world is the main challenge to effective punitive action and the fundamental problem facing prosecuting authorities. However, various international instruments which already exist or are under preparation are capable of providing an appropriate response. One thing that nevertheless needs to be said is that the fight against financial crime has led to a resurgence of co-operation with unco-operative places (tax havens). However, some of the places described as unco-operative seem to be becoming platforms for servers which host sites offering on-line betting. It would therefore be appropriate, in the context of a possible convention, to clarify the possibility of using anti-cybercrime instruments, not only to curb the illegal supply of on-line betting, but also to intercept communications or transfers of funds connected with match-fixing.

## **VIII. Follow-up**

### **34. Monitoring**

The recommended type of monitoring for the convention would be similar to that used by the sporting conventions (Convention on Spectator Violence ETS 120, Anti-Doping Convention ETS 135 + ETS 188). It would be based on an examination of national evaluation reports drawn up by means of a questionnaire and could be supplemented by consultative or assessment visits, if required, at the request of states or by decision of the convention committee. However, there is no plan for a monitoring system entailing regular and systematic visits.

Moreover, the secretariat of the convention committee may use the follow-up findings for standards adopted and decisions taken in states to update reports and trend analyses on integrity issues.

### **35. Convention committee**

A convention committee should be set up, in particular to monitor implementation of the convention and co-operation between parties and the relevant partners.

This committee should provide for the appointment, for each state party, of a delegation of three experts in the field of sports policy, betting market regulations, justice and the fight against crime. For the examination and preparation of specialised questions, the convention committee should ideally be able to draw on the expertise of EPAS, CDPC, GRECO and the future network of betting operators referred to in the box in section 12. This committee could also involve representatives of the sports movement and betting operators.

## IX. Form of a legal instrument

### 36. Stand-alone convention, framework convention or additional protocol

An international legal instrument on manipulation of sports results will mainly deal with preventive issues but also with some questions of a criminal law nature. Since preventive measures are always tailored to the problems they are dealing with, and as no other binding legal instrument yet deals with the issue of match fixing, it is obvious that an additional protocol to any of the existing conventions is not a realistic option.

On the other hand, the issue of manipulation of sports results and the measures needed is so widely known that a broadly based framework convention is not a viable option either, especially bearing in mind the time needed to produce an operational legal instrument following such a convention. Already the time needed to prepare an operational legal instrument will cause some delays to the implementation of measures against match fixing.

Therefore, the most logical option seems to be a stand-alone convention, dealing with all preventive measures and sanctions aimed at suppressing the manipulation of sports results.

### 37. Participation of non CoE States

Insofar as it is the intention of the Council of Europe member states to promote a global response to the problem of the manipulation of results, it will be necessary to define the procedure in such way that this convention can be signed by non-European states. Given the interest of the European Union in various issues addressed in this project, the opening of such an instrument to ratification by the EU should be considered.

## X. Conclusion

### 38. Need for a new instrument

Taking the facts and undertakings of Recommendation CM/Rec(2011)10 as a basis, it seems that the fight against manipulation of the results of sports events calls for a concerted and better coordinated international response. In this context, practical measures have already been taken at both international and national levels. Nevertheless, these measures do not yet seem to be sufficiently effective. Indeed, the manipulation of results continues to grow across the world. This is why it seems appropriate to step up these efforts through a new international instrument, which could be drawn up under the aegis of the Council of Europe. Furthermore, given that result manipulation is essentially an international problem, there is good reason to deal with it within a broad political forum, and the Council of Europe seems to offer a legitimate framework, as it makes it possible for not only its member states, but also other states, international sport federations and other specialised NGOs to get involved. When it adopted Recommendation CM/Rec(2011)10, the Council of Europe certainly started this process of coordinating efforts.


Looking beyond this recommendation, there is a need today to set up an international network of betting market regulators, to strengthen the commitment to put in place a general framework to reduce the risk of manipulation, and to draft more detailed rules for coordinated implementation of this general framework. A future Council of Europe legal instrument should therefore cover all those general measures designed to prevent and combat the problem, rather than to focus on criminal law aspects. Similarly, a new instrument should not deal with the controversial issue of the opening up of betting markets to competition.

### 39. Type of instrument

These aims can be achieved either through decisions and non-binding legal instruments, within the framework of EPAS, for example, or through the negotiation of a new convention, which would be legally binding and would allow the establishment of a specialised working body.

Compared to further co-operation based on non-binding instruments, the option of drafting a convention is a more demanding legislative exercise. Moreover, it requires a strong political commitment, in particular from EPAS member states, but also from non-members, which would be invited to get involved. However, a convention would bring about a more lasting commitment and better clarification of the compatibility of the measures proposed with a national legal framework; it would allow the setting up of a coordinating body which might involve the different authorities concerned on an equal footing, greater openness to third states, including those outside Europe, and a more effective and continuous role as an observatory of the integrity of sport. Lastly a convention would be a flexible instrument as it would apply only to those countries which ratified it.

***Ministers are invited to discuss the issues related to the promotion of integrity in sport to combat match fixing:***

- ***In which areas of the fight against manipulations of sports results is there a need for further harmonisation or co-operation?***
  - ***Which functions should a strengthening of co-operation fulfil?***
  - ***What are the pros and cons of negotiating an international convention compared to continuing with co-operation based on existing conventions, complemented by decisions and non-binding legal instruments?***
  - ***How might a Pan-European initiative of co-operation and harmonisation give rise to an international movement?***
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**Draft Resolution No. 1****International co-operation on promotion of the integrity of sport against the manipulation of results (match-fixing)**

The Ministers responsible for Sport, meeting in Belgrade, in Serbia, for the 12<sup>th</sup> Council of Europe Conference on 15 March 2012:

- Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage, and of facilitating their economic and social progress;
- In accordance with the Final Declaration adopted by the Heads of State and Government of the Council of Europe at their Second Summit, held in Strasbourg on 10 and 11 October 1997, which emphasises the standard-setting role of the Council of Europe, in particular to seek common responses to the challenges posed by the growth in corruption;
- Considering the conclusions of the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), which recommended the continuation of Council of Europe activities which serve as references in the field of sport;
- Reiterating that the Resolutions CM/Res(2007) 8 and CM/Res(2010) 11 establishing the Enlarged Partial Agreement on Sport (EPAS) assigned the task of developing standards to deal with topical issues in international sport to the EPAS;
- Considering the EPAS Statute, which specifies that EPAS may “submit, when appropriate, draft recommendations as well as proposals for conventions for examination and possible adoption by the Committee of Ministers”;
- Having regard to its Recommendations (92) 13Rev on the European Sports Charter; (92)14Rev on the Code of Sports Ethics and (2005) 8 on the Principles of Good Governance in Sport;
- In the light of the work and conclusions of the 11th Council of Europe Conference of Ministers responsible for Sport, held in Athens on 11 and 12 December 2008, in particular in the areas of match-fixing, corruption and illegal betting;
- In the light of Resolution No. 1 of the 18th Council of Europe Informal Conference of Ministers responsible for Sport (Baku, 22 September 2010) on the promotion of the integrity of sport against the manipulation of sports results (match-fixing);
- Considering the Recommendation CM/Rec(2011)10 of the Committee of Ministers to member states on promotion of the integrity of sport against manipulation of results, notably match-fixing ;
- Acknowledging that, as a general rule, the sports movement is responsible for sport but that public authorities are invited, where appropriate, to develop mutual cooperation with the sports movements, in order to promote the values and benefits of sport;
- Convinced that the successful implementation by private companies and sports organisations of effective good governance policies, including codes of ethics, would help to strengthen their self-governance in matters relating to sport and would further consolidate their position with respect to public authorities on the basis of mutual respect and trust;
- Considering that it is necessary to further develop a common European framework for the development of sport in Europe, based on the notions of pluralist democracy, the rule of law, human rights and ethical principles;
- Reaffirming that the nature of sport itself, based on fair-play and equal competition, requires that unethical practices and behaviours in sport be forcefully and effectively countered;
- Aware of the pressures which modern society, marked among other things by the race for success and economic profits, brings to bear on sport;
- Stressing their belief that the consistent application of the principles of good governance and ethics in sport would be a significant factor in helping to eradicate corruption, manipulation of sports results (match-fixing) and other malpractices in sport;
- Acknowledging that attempts to manipulate sports results, including in an organised manner and at the international level, constitute an important threat for the integrity of sport;
- Concerned by the involvement of organised crime in the manipulation of sports results, especially at international level;
- Concerned that the development of online betting increases some risks for the integrity of sports;
- Convinced that match-fixing may erode confidence among the public if it perceives sport as a place where manipulation gives substantial financial benefits to certain individuals, rather than as an activity where the glorious uncertainty of sport predominates;

- Convinced that dialogue and cooperation among public authorities, betting operators and sports organisations based on mutual respect and trust is essential in seeking effective common responses to challenges posed by the problem of manipulation of sports results;
- Welcome the work performed in the framework of the Feasibility Study on a possible new legal instrument relating to manipulation of sports results, and notably match-fixing, based on the Recommendation CM/Rec(2011)10;
- Invite the Enlarged Partial Agreement on Sport (EPAS), where appropriate, in co-operation with the Group of States against Corruption (GRECO), the European Committee on Crime Problems (CDPC), Moneyval, and the Economic Crime Division (Cyber crime) :
  - to launch the negotiation of a new international [convention] [non-binding legal instrument] against manipulation of sports results and notably match-fixing, that would establish an appropriate framework of commitment and co-operation to fight this scourge;
  - to involve in this work all interested members and EPAS observer states (which are or are not parties to the European Cultural Convention), with a view to developing an instrument that may be broadly and swiftly signed by non European states, as well as by states, which have not yet joined EPAS;
  - to set up a platform of co-ordination and monitoring that will rely, as far as possible on existing bodies and structures and that will ensure co-operation with the betting operators and the sports movement;
  - to continue to implement the Recommendation CM/Rec(2011)10;
- Invite the Council of Europe i.e. the CDPC, in co-operation with GRECO and EPAS to consider, as a separate issue, the feasibility of an additional protocol to the Council of Europe Criminal Law Convention on Corruption (ETS no. 173), that would expand to the sport sector the scope of application of its provisions;
- Invite EPAS to support the establishment of an international network of the national authorities in charge of the policy and, where appropriate, the regulation of the betting market;

## **Appendices:**

### **1. Three illustrative cases**

#### “Chinese” case

30 people, players and coaches, have been accused of receiving money from the Chinese gambling mafia in relation to several first division matches in Belgium which were fixed between 2004 and 2006. These payments were made to influence the outcome of these matches so that large profits could be made by betting on the results.

The central figure in this fixed betting mafia is a Chinese businessman. He had infiltrated what was at the time, in 2004, a first division football club, and invested in it at a time when it was in financial difficulty. In exchange, he allegedly demanded the fixing of matches on which he laid bets. Some players, including goalkeepers, and some coaches, according to the prosecution, accepted bribes to fix matches.

The main perpetrator being on the run, he has never been questioned by the Belgian investigators, but is said to have been recently located in China. Investigators hope to be able to travel to China soon in order to question him. However, unless he decides to attend his trial voluntarily, he will probably never be tried, as China does not extradite its own nationals.

The charges are numerous: private corruption, participation in a criminal organisation, money-laundering, forgery, tax evasion and financial fraud, fraudulent organisation of insolvency.

#### Bochum

In November 2009 the German police conducted 50 house searches and arrested 15 people on suspicion of fixing at least 200 soccer matches in 9 countries. Fixing of some matches was actually admitted by the perpetrators during the trial in Bochum, Germany: one match in the FIFA World Cup qualifiers, one match of the U-21 teams, one match in the Champions League (out of 3 under investigation), 4 matches in the Europa League (out of 12 under investigation), 7 matches in Germany, 13 matches in Switzerland (out of 28 under investigation), 5 matches in Austria, 5 matches in Belgium (out of 17), 5 matches in Turkey (out of 29 under investigation), 2 matches in Hungary (out of 13), one match in Slovenia (out of 7 suspect cases) and one match in Croatia (out of 14 under investigation).

Matches were fixed by an extremely well-organised criminal group, led by two persons already convicted for fixing matches through a German referee in 2005. In 2009 those two persons, the betting syndicate leaders, in 2009 were bribing players, coaches, referees and other officials, netting themselves millions of Euros in a single year.

The leading organiser admitted that he was spending a million euros on gambling every month, successfully fixing at least one match a week. He and the second organiser were each sentenced to five-and-a-half years' imprisonment and were labelled “enemies of sport” by the state prosecutor.

The German police submitted their findings to law enforcement agencies of the European countries involved. Those agencies usually did not know what was happening or did not have enough evidence themselves. Some of the law enforcement agencies have closed the case and some are still investigating. Nevertheless, it is obvious that a well-organized match fixing ring had almost no problems in fixing matches all over Europe.

#### “Swiss” case

Investigation of Europe's biggest betting scandal, which started in Bochum, led to the arrest of 2 further persons in Switzerland in 2009, and 9 Swiss football players (7 professionals, 2 amateurs) involved in match fixing were suspended in 2010, 5 of them for life. Some of the players were also fired from their clubs. Players were suspended for receiving money for persuading other players to fix matches or for fixing matches themselves. When interrogated they spoke about the methods applied in match fixing. The most common method was bribery but extortion and even poisoning of a club's own players were known. In one case the betting syndicate financed part of the training's camp expenses for one of the clubs, which deliberately lost all friendly matches during this camp.

In addition to 13 fixed matches confessed to by the perpetrators in Germany, a further 15 matches were investigated by the Swiss authorities. After receiving first warnings, Swiss football clubs made several attempts to clarify the situation themselves. They asked players for a signed statement that they had no involvement in alleged match fixing, and they have actively assisted the police. In one case, the club owner acquired the permission of players to tap their telephones, private detectives were hired, etc. Other club owners threatened their own players with dissolution of the club if any match fixing was proved.

The outcome of the law enforcement investigation is not yet known and no verdicts against the suspected players have been made known to date.

## 2. Possible structure of an international convention

TITLES AND POSSIBLE ELEMENTS	REFERENCE TO THE REC TO BE CONSIDERED
<b>Chapter 1 Purpose, scope, definitions</b>	
• Purpose	
• Scope	
• Definitions	
○ manipulations	G1
○ sports betting / legal betting / illegal betting / irregular betting	G4
○ athletes	G2?
○ insider information	G3
<b>Chapter 2 Preventive measures</b>	G47
• Domestic co-ordination	G5, G6, G7, G8,
• Sports movement	G26, G27, G28, G29, G30, G31, G32, G33, G34
• Setting up a framework for the betting market	
• Betting operators	G35, G38, G40, G41, G42, G43, G44, G45, G46
<b>Chapter 3 International co-operation</b>	
• Between public authorities and sports movement	G9, G18, G21, G22, G23
○ Mutual recognition of sanctions	G25
○ Exchanges of information	G12, G48
• Between public authorities and betting operators	G10, G24
○ Role of a market regulatory authority	G35, G36,
• Between public authorities, sports movement and betting operators	R4 G20
○ Public-private partnership	
○ Platform of co-ordination	G49

○ Co-operation on betting monitoring systems	G12, G37, G39
• International co-operation between states and public authorities	
○ Extradition Reference to the 1957 European Convention on Extradition (ETS No. 24) and (where applicable) to the European mandate	
○ Mutual assistance in criminal matters Reference to the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30)	G17
<b>Chapter 4 Sanctions</b>	
• Sanctions	
• Criminal	G13, G14, G15,
• Administrative	
• Disciplinary	G25
<b>Chapter 5 Law enforcement / Criminal procedure / Cybercrime</b>	
• Law enforcement	G16
• Reference to prosecution of cybercrime activities	
• Customer identification and monitoring of sports betting transactions	G19
<b>Chapter 6 Follow-up</b>	
• Monitoring	R2
• Possible recommendations in the framework of the Convention	R3.1
• Interpretation	
• Convention committee	
• Platform of co-operation with the sports movement and betting operators	R3.3
<b>Chapitre 7 Amendment, final clauses...</b>	
• Ratification open to non-CoE member states	R3.4