



Explanatory Report to the Council of Europe Convention on the Manipulation of Sports Competitions

Magglingen, 18.IX.2014

1. The Council of Europe Convention on the Manipulation of Sports Competitions, prepared by an intergovernmental Drafting Group set up by the Governing Board of the Enlarged Partial Agreement on Sport, was adopted by the Committee of Ministers at the 1205th meeting of Ministers' Deputies on 9 July 2014. The convention was opened for signature by the member States of the Council of Europe, the European Union and the non-member States which participated in its drafting or enjoy observer status with the Council of Europe on 18 September 2014, in Magglingen/Macolin (Switzerland).

2. The text of the Explanatory Report prepared by the Drafting Group and transmitted to the Committee of Ministers of the Council of Europe does not constitute an instrument providing an authoritative interpretation of the text of the convention, although it might facilitate the understanding of the convention's context and provisions.

Introduction

3. Recent years have shown time and again that sport, too, is susceptible to scandals, and that a growing number of these are related to "match-fixing". This phenomenon, used within the framework of the present report under the more generic concept of "manipulation of sports competitions", is neither confined to matches, i.e. contests in which two people or teams compete against each other, nor to the sole manipulation of the final outcome of a sports competition, but covers any intentional and improper alteration of the course or result of a sports competition in order to remove all or some of the uncertainty associated with this competition, with a view to obtaining an undue advantage for oneself or for others. Manipulation of sports competitions has taken on worrying proportions since the beginning of the new millennium.

4. Evidence on trends connected to the emergence of manipulation of sports results have been documented since the beginning of the 2000's in numerous studies, working papers and positions prepared by researchers, sports organisations, sports betting operators organisations and international organisations. Greater commercialisation of sport and the extensive media coverage given to it have led to an increase in the economic stakes involved in achieving certain sports results. This in turn has encouraged the development of new activities, both lawful and unlawful. Despite major efforts by sports organisations and in particular the Olympic movement to promote good governance, the sports movement is not immune to corrupt practices. At the same time, the phenomenal growth of the sports betting market due to technological improvements and the development of certain markets has created a new environment in which anyone can have a personal and direct financial interest in the course or outcome of any given competition. ⁽¹⁾

(1) See, for example: P. Boniface, S. Lacarrière, P. Verschuuren, "Sports betting and corruption: how to preserve the integrity of sport", IRIS, 2012; "Interpol Integrity in Sport Weekly Media Recap" on the internet at their site: <http://www.interpol.int/News-and-media/News> ; D. Hill, "The Fix: Soccer and Organized Crime", McClelland & Stewart, 2008.

5. This overall new context is undoubtedly one of the main reasons for the significant increase in the number of cases of manipulation of sports competitions since the early 2000s. This rise has gone hand in hand with two specific elements. Firstly, the proliferation of different types of betting provided, sometimes without being effectively supervised by the authorities responsible for the betting market, has created types of bets which are easier to manipulate and manipulations which are more difficult to detect. And secondly, the development of a large illegal market which gives customers a very high pay-out has attracted criminal groups, interested in manipulating the sports competitions on which bets are placed so as to exploit the information through betting, and in the course of this activity laundering criminal finances.⁽¹⁾

6. The manipulation of sports competitions poses a challenge to the rule of law because it is linked to fraud, organised crime and corruption. Because it occurs in the sports sector and when linked to betting, the economic stakes are considerable. It also, however, poses a threat to the future of sport as a social, cultural, economic and political practice which is called into question every time doubts are raised about its integrity and values. In jeopardising sports ethics and the unpredictability that underlies every sporting contest, it calls into question the very nature of sport, and therefore the public's interest in sport and the willingness of public and private sponsors to finance it.

Council of Europe initiative to promote the integrity of sport

7. The issue of corruption came under close scrutiny by the Council of Europe very early on because of the danger it poses to pluralist democracy, the rule of law, human rights and ethical principles. The Council of Europe's standard-setting role in the face of growing corruption was recognised as far back as the Second Summit of Heads of State and Government of the Council of Europe, on 10 and 11 October 1997 in Strasbourg.

8. A reference Council of Europe instrument dealing with sport and its basic principles such as the integrity of sport and those involved in it was adopted in 1992 in the form of Recommendation No. R(92)13rev on the revised European Sports Charter. Two other recommendations, Recommendation Rec(2005)8 on the Principles of Good Governance in Sport and Recommendation CM/Rec(2010)9 on the revised Code of Sports Ethics, built on this initial document in an effort to improve the integrity of sport and ensure that it was in a stronger position and better governed.

9. In fulfilling its mission to defend ethical sport, the Council of Europe has played a key role in coordinating policies in the fight against doping. In the 1980s, this work led to the opening for signature of the Anti-Doping Convention (1989, ETS No. 135, hereafter "Convention 135"), which regulated the fight against an emerging threat to the integrity of sport. In 2007, Resolution CM/Res(2007)8 established the Council of Europe's Enlarged Partial Agreement on Sport (hereafter "EPAS") and assigned it the task of developing standards to deal with topical issues in sport at a pan-European level and following them up. EPAS provided an opportunity to continue the Council of Europe's standard-setting work and paved the way for targeted action in certain areas. In the course of the preparations for and follow-up to the 11th Council of Europe Conference of Ministers responsible for Sport in Athens on 11 and 12 December 2008, the issues of ethics and autonomy in sport were explored by EPAS in greater depth.

10. It was at this conference that States made a clear political commitment to address issues relating to ethics in sport, in particular match-fixing, corruption and illegal sports betting. This in turn resulted in the adoption at the 18th Council of Europe Informal Conference of Ministers responsible for Sport, held in Baku on 22 September 2010, of the first resolution to deal specifically with the manipulation of sports results (namely, Resolution No. 1 on promotion of the integrity of sport against the manipulation of results). In this resolution, Council of Europe

(1) See, for example, C. Kalb and P. Verschuuren, "White Paper – Money laundering: the latest threat to sports betting?", IRIS, 2013.

member States are called upon to adopt effective policies and measures aimed at preventing and combating the manipulation of sports results in all sports, while EPAS is called upon to continue work in this area with a view to the adoption of a recommendation of the Committee of Ministers to member States on the manipulation of sports results.

11. Such a recommendation, namely Recommendation CM/Rec(2011)10 on the promotion of the integrity of sport against manipulation of results, notably match-fixing, was later adopted by the Council of Europe's Committee of Ministers on 28 September 2011. Pending the finalisation of the convention to combat the manipulation of sports competitions, it constituted the most detailed international standard to date, offering a full range of measures to combat the problem.

Reasons for preparing an international legal instrument

12. In its Resolution 1602 (2008) on the need to preserve the European sport model, the Parliamentary Assembly of the Council of Europe had noted that recent scandals in several European countries, involving illegal sports betting and manipulation of results, had seriously damaged the image of sport in certain countries, including in Europe. It called for the introduction of mechanisms to reduce the risk of match-fixing, illegal sports betting or other forms of corruption. It further emphasised that these problems would require more active involvement on the part of state authorities.

13. Furthermore, while certain important aspects of corruption in sport are already covered by existing international conventions on corruption and organised crime, namely the United Nations Convention against Transnational Organized Crime (2000) and the United Nations Convention against Corruption (2003), these international legal instruments do not specifically deal with cases involving manipulation of sports competitions, which may occur outside any transnational crime network and without any acts falling within the definition of corruption having been committed.

14. Two specific Council of Europe conventions in the field of corruption and money laundering, namely the Criminal Law Convention on Corruption (1999, ETS No. 173, hereafter "Convention 173") and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005, CETS No. 198, hereafter "Convention 198"), may be used as standard-setting reference points in the definition of the mechanisms and legal means needed to combat the criminal organisations which bribe persons involved in sport in order to manipulate sports results, and use sports betting as a means of laundering money and as a source of financing for their activities. However, manipulation of sports competitions may involve corrupt practices that are not covered by Convention 173 or may even not involve corrupt practices at all. As for Convention 198, illegal sports betting and profits derived from the manipulation of sports results do not necessarily fall within the scope of this instrument. ⁽¹⁾

15. Under the terms of Recommendation CM/Rec(2011)10, the Secretariat of the Enlarged Partial Agreement on Sport (EPAS) of the Council of Europe was invited, in co-operation with other national and international bodies, to carry out a feasibility study on the possibility of adopting a legal instrument on match-fixing. This study, which was presented at the Council of Europe Conference of Ministers responsible for Sport in Belgrade on 15 March 2012, concluded that an international convention dealing with all preventive measures and sanctions aimed at suppressing the manipulation of sports competitions was the most logical option.

(1) See, for example, Criminalization approaches to combat match-fixing and illegal/irregular betting: a global perspective. Comparative study on the applicability of criminal law provisions concerning match-fixing and illegal/irregular betting, IOC / UNODC, Lausanne / Vienne, July 2013, pp. 276 ff.

16. As an international organisation having a standard-setting function in many different fields, the Council of Europe was the ideal forum for preparing such an instrument, especially in view of the international scale of the problem.

Main features of the Convention

17. The advantage of an international convention in this area is that it promotes a risk- and evidence-based approach and allows commonly agreed standards and principles to be set in order to prevent, detect and sanction the manipulation of sports competitions. To achieve this, the convention involves all stakeholders in the fight against manipulation of sports competitions, namely public authorities, sports organisations and sports betting operators. To ensure that the problem is addressed in a global context, it allows states which are not members of the Council of Europe to become parties by the convention.

18. More specifically, the following parts of the convention may be distinguished:

- prevention;
- law enforcement;
- international co-operation measures;
- exchange of information;
- follow-up to the convention.

19. As regards prevention, the aim of the convention is to pave the way for more systematic application of the measures adopted by sports organisations, sports betting operators and public authorities to enable them to jointly identify and prevent manipulation of sports competitions and ensure better co-operation between these stakeholders. While the convention recognises the autonomy of sports organisations and their role in the regulation of sports activities and competitions, in awareness-raising, training and information sharing, it also highlights the fact that sports betting operators have a responsibility within the implementation of the anti-fraud measures mentioned in Recommendation CM/Rec(2011)10 (manipulation of results, conflicts of interest and misuse of inside information). The convention also provides for the introduction of a mechanism to exchange information between the various national systems, the national platform. As regards public authorities, the convention encourages them to adopt the necessary legislative or other measures, including financial ones, to support any initiatives taken by other stakeholders and to combat illegal sports betting, but also to identify the authorities responsible for implementing the legal framework for the regulation of their sports betting market.

20. With regard to the various aspects of law enforcement, the convention seeks, inter alia, to identify those acts which should be prosecuted without, however, imposing the creation in each Party's domestic law of a harmonised special criminal offence in the field. The purpose of clarifying which types of conduct are to be considered offences is to facilitate judicial and police co-operation between Parties. Specific references are also made to money laundering and to the liability of legal persons, which depending on the Parties' applicable law can be criminal, civil or administrative. With a view to ensuring an efficient enforcement system, the convention considers a broad range of criminal, administrative and disciplinary sanctions. It also requires the Parties to ensure that sanctions are effective, proportionate and dissuasive.

21. Because of the transnational aspect of the manipulation of sports competitions and the need to combat criminal and other acts related thereto, it was deemed vital to step up international co-operation. The convention is concerned as much with enforcement as with prevention, including detection, exchange of information and education. Accordingly, international sports organisations are recognised as having a role to play as key partners of public authorities in combating the manipulation of sports competitions, in particular where disciplinary sanctions and exchanges of information are concerned. Sports betting operators are also recognised as key partners on prevention and exchange of information of betting-related manipulations. In providing for international co-operation in investigating and prosecuting offences, the convention does not prejudice instruments which already exist in the field of mutual assistance in criminal matters and extradition and which can facilitate

investigations and prosecutions, such as the European Convention on Extradition (1957, ETS No. 24, hereafter “Convention 24”), the European Convention on Mutual Assistance in Criminal Matters (1959, ETS No. 30, hereafter “Convention 30”) and its Additional Protocol (1978, ETS No. 99). The Parties’ task to encourage the principle of mutual recognition of disciplinary sanctions adopted by national sports organisations is also envisaged, in order to avoid an athlete sanctioned by a national organisation managing to evade punishment by participating in other competitions or the risk of disciplinary sanctions being imposed twice for the same offence.

22. The setting-up of a convention follow-up committee to monitor implementation of the convention has the merit of providing an institutional base and ensuring sustainability. This type of monitoring is similar to that used by the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (1985, ETS No. 120, hereafter “Convention 120”) and by Convention 135.

Preamble

23. The Preamble reaffirms the commitment of the signatories to the convention to tackling the problem of manipulation of sports competitions. In order to pave the way for possible ratification by the European Union, the term “Parties” was deemed preferable to “State Party” throughout the convention. The convention seeks to contribute to greater national and international co-operation, which is instrumental in fighting this worldwide scourge, and more specifically co-operation between the main stakeholders who are: public authorities, the sports movement and sports betting operators.

24. The reference to “notions of pluralist democracy, rule of law, human rights and sports ethics” is derived from Recommendation CM/Rec(2011)10 on “Promotion of the integrity of sport against manipulation of results”, adopted by the Committee of Ministers of the Council of Europe on 28 September 2011.

25. The term “sports ethics” is defined in Recommendation CM/Rec(2010)9 of the Committee of Ministers to member States on the revised Code of Sports Ethics, adopted by the Committee of Ministers of the Council of Europe on 16 June 2010. It has two underlying principles: fairness and sport as an arena for individual self-fulfilment. Fairness refers to practising a sport while faithfully respecting the rules of competition, and to providing everyone with an equal chance of taking part in sport. Sport should be practised according to fair play, be free of discrimination and be an activity for all. Moreover, sport should be an arena for self-fulfilment in which everyone is given the opportunity for self-development and self-control according to their potential and interests. In this way, sport can become an important ethical and cultural factor in society.

26. The Preamble recalls that the manipulation of sports competitions has the potential to affect all countries and all sports and that it constitutes a worldwide threat to the integrity of sport. In this respect it outlines the need for a legal instrument open to states other than members of the Council of Europe. Integrity of sport is understood as an ethical fundamental value in the sport movement characterised by credibility, transparency and fairness as well as by the unpredictability of sports competition results.

27. The Preamble states that the manipulation of sports competitions may be linked to transnational organised crime and poses a direct threat to public order and the rule of law.

28. The Preamble includes a reference to the main international instruments, whose implementation may contribute to effective action against the manipulation of competitions. These instruments are as follows:

- Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5, hereafter “Convention 5”) and the Protocols thereto;

- European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at football matches (1985, ETS No. 120);
- Anti-Doping Convention (1989, ETS No. 135);
- Criminal Law Convention on Corruption (2002, ETS No. 173);
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2008, CETS No. 198);
- United Nations Convention against Transnational Organized Crime (2000) and the Protocols thereto;
- United Nations Convention against Corruption (2003).

29. The Preamble emphasises the importance for the Parties to effectively, and without undue delay, investigate offences within their jurisdiction. Given the importance of this phenomenon, each Party should recognise the need to lead such investigations and to mobilise resources with this in mind, in accordance with their legislation. According to the seriousness of the acts committed, the competent authorities may consider that effective investigation may involve monitoring communications, seizing material, covert surveillance, monitoring bank accounts and other financial investigations. According to the seriousness of the conduct, they may involve co-operation between different public authorities, and those responsible for investigations or criminal prosecutions: this co-operation may include an exchange of information between relevant authorities, on their own initiative or upon request. In some countries, these competent authorities are prosecutorial authorities which operate under the responsibility of autonomous magistrates.

30. Referring to the key role of Interpol, the Preamble emphasises that the intention of the convention is not to introduce a framework that would act as a substitute for the work done by other organisations such as Interpol, but rather to enhance the role that these organisations play, by complementing it.

31. While noting the principle of autonomy of sport and that the sports organisations are responsible for sport – and therefore for the fight against manipulation of sports competitions, the Preamble states that public authorities may have a responsibility to protect the integrity of sport and support the sports movement in the fight against the manipulation of competitions.

32. The principle of autonomy of sport referred to in the Preamble has the same meaning as in Recommendation CM/Rec(2011)3 of the Committee of Ministers to member States on the principle of the autonomy of sport in Europe. This recommendation specifies the main features of the autonomy of sport, namely the possibility for non-governmental sports organisations to establish, amend and interpret the “rules of the game” appropriate to their sport freely, without undue political or economic influence; to choose their leaders democratically, without interference by States or third parties; to obtain adequate funds from public or other sources, without disproportionate obligations; to use these funds to achieve objectives and carry out activities chosen without severe external constraints. It should be underlined that the principle of autonomy as mentioned here does not intend to exclude the sports movement from compliance with the rule of law and the applicable law in each jurisdiction.

33. Recognising that the development of sports betting activities (and in particular illegal betting) increases the risk of the manipulation of sports competitions, and emphasising the transnational nature of the risks of manipulation, as well as the potential involvement of organised crime, the Preamble sees this development of the sports betting activities as a potential threat to the integrity of sport, something which the convention seeks to address in a practical manner.

34. It should be noted here that the Parties have a wide margin of discretion when making policies regarding sports betting, in accordance with applicable law. One consequence of this approach is that the convention aims to be compatible with all types of sports betting market organisation (prohibition, monopoly, market open to licensed operators or free market). The reference to compliance with the “applicable law” draws attention to the fact that states must nevertheless abide by the rules in force and in particular the relevant applicable international and European Union law.

35. The Preamble makes it clear that this convention covers cases of national or transnational manipulation of sports competitions, whether or not they are linked with sports betting or involve a criminal offence. It thus recognises that the manipulation of sports competitions is not necessarily linked to sports betting or criminal offences.

36. Lastly, the Preamble refers to all the initiatives taken by the Council of Europe to promote the integrity of sport, in particular Resolution No. 1 adopted at the 18th Council of Europe Informal Conference of Ministers responsible for Sport in Baku on 22 September 2010, which invited the Enlarged Partial Agreement on Sport (EPAS) to carry out a feasibility study concerning the possibility of adopting an international convention. This same study, which found that an international convention was the most logical option, was conducted on the basis of Recommendation CM/Rec(2011)10 against manipulation of sports results. Resolution No. 1 on international co-operation on promotion of the integrity of sport against the manipulation of results (match-fixing), adopted at the 12th Council of Europe Conference of European Ministers responsible for Sport, later paved the way for the negotiation of an international convention on this subject, a culmination of the work done by the Drafting Group responsible for drafting an international convention to combat the manipulation of sports competitions.

CHAPTER I – PURPOSE, GUIDING PRINCIPLES, DEFINITIONS

Article 1 – Purpose and main objectives

37. Article 1 concerns the purpose of the convention, namely to combat manipulation of sports competitions. By including a reference to sports ethics and the integrity of sport, this article emphasises that all forms of manipulation pose a threat to the values of sport. In stating that the main purpose of the convention relates to sport. This reference to the autonomy of sport needs to be understood in the sense of Recommendation CM/Rec(2011)3 of the Committee of Ministers to member States on the principle of autonomy in sport in Europe (see the Preamble above) which, like Recommendation Rec(92)13rev of the Committee of Ministers to member States on the revised European Sports Charter, specifies that sports organisations are to set up autonomous decision-making mechanisms within the limits laid down by the law of the State within whose territory they have their seat.

38. The second paragraph of Article 1 specifies that in order to achieve its purpose, the convention aims to prevent, detect and sanction manipulation of competitions and to promote national and international co-operation between those concerned, principally public authorities, sports organisations and sports betting operators.

39. The term “public authorities” as used here encompasses, inter alia, the legislature, the judiciary, the police, the authorities responsible for regulating sports betting, the governmental authorities in charge of sport, the authorities responsible for personal data protection and local authorities. This broad definition does not imply that each public authority concerned in one way or another by a provision of this convention is systematically covered by all the references to public authorities. The definition of relevant or competent public authorities, referred to in subsequent articles, should be applied with regard to the specific nature of the task and the statutory mandate of the authorities. “Organisations involved in sport” refers primarily to sports organisations and competition organisers, but can also cover supporters’ clubs and players’ organisations, organisations which seek to promote sports ethics or good governance in sport and their fraud detection systems. The term “organisations involved in sports betting” refers to any operator, publicly or privately owned, authorised to provide

betting services but may also cover umbrella organisations of operators (for example of the lotteries or commercial gambling operators) and their fraud detection systems.

Article 2 – Guiding principles

40. Article 2 provides a list of guiding principles which those involved in combating the manipulation of sports competitions must observe, both in their activities and in their respective relations. These principles are as follows:

- human rights;
- legality;
- proportionality;
- protection of private life and personal data.

The principles of respect for human rights, legality and proportionality must apply both to state authorities and to private stakeholders in the fight against manipulation of sports competitions. Human rights must indeed be respected inasmuch as they are rules dictated by public policy which are essentially enshrined in international law instruments such as Convention 5; the same applies to the principles of legality and proportionality inasmuch as they constitute general principles of law.

41. The term “personal data”, as used in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981, ETS No. 108, hereafter “Convention 108”), means “any information relating to an identified or identifiable individual (“data subject”)”. The protection of private life and personal data is part of human rights; however, it was decided to mention it to stress that the implementation of this convention must abide with the relevant standards on protection of private life and personal data.

Article 3 – Definitions

42. Article 3 contains several definitions that apply throughout the convention.

i. Definition of “sports competition”

43. This definition is based on three criteria:

- a real sports event;
- organised in accordance with the rules of an organisation mentioned in the list drawn up by the Convention Follow-up Committee in accordance with Article 31.2, as well as its continental and national affiliated organisations, if necessary;
- recognised by a competent sports organisation.

44. The term “competition” covers each event, i.e. each race and match, but should not necessarily be interpreted as covering either the whole tournament (for example a championship where the winner is determined following a series of competitions) or all of the competitions taking place within the framework of an event involving several competitions or tournaments (for example the Olympic Games). Since processes such as the draw of the opponents or the designation of the referee matter to the competition, it should be considered as part of the competition.

45. The term “real sports event” does not include virtual sports events such as those simulated by certain fixed-odds betting terminals. Other events organised by sports organisations, for example assemblies or conferences, should not be considered as sports events.

46. The term “competent sports organisation” refers to a sport organisation, as defined in Article 3, paragraph 2, which has the right to include in its fixture list a competition involving competitors from a given geographical area.

ii. Definition of “sports organisations”

47. This term refers to any organisation which governs sport, namely those mentioned in the list drawn up by the Convention Follow-up Committee in accordance with Article 31.2, as well as any continental or national organisations affiliated thereto.

48. According to this definition, continental organisations are deemed to be “international”, while local organisations are deemed to be “national”. National organisations also include national umbrella organisations (for example “national confederations of sport”) which bring together the national sport federations.

iii. Definition of “competition organisers”

49. “Competition organiser” means any sports organisation or any other person, irrespective of their legal form, which organises sports competitions. This definition therefore covers both natural persons and legal persons. In most cases, competition organisers are sports organisers, but sometimes sports organisations recognise competitions organised by other entities (e.g. organisation in charge of a multi-sport event or private company).

iv. Definition of “manipulation of sports competitions”

50. This is a general definition which describes the different types of manipulation that the convention intends to cover. This definition is an integral part of “criminal offences relating to the manipulation of sports competitions”, defined in Article 15, but this definition alone does not intend to define the scope of criminal offences.

51. The words “aimed at” indicate that the definition includes not only arrangements, acts or omissions which improperly alter the result or course of a competition, but also the acts committed with the intention of improperly altering the result or course of a competition, even if the arrangement, act or omission is unsuccessful (e.g. if a player on whom pressure has been brought to bear is not actually selected for the competition).

52. The term “in order to” indicates an intention to obtain an undue advantage for oneself or others, even if this intentional arrangement, act or omission, aiming at improperly modifying the results or course of a sports competition, fails to obtain the advantage sought (e.g. if the competition in question is the subject of an alert issued by the regulator and the sports betting operators refuse to take bets on the competition, thereby preventing the undue advantage from being obtained).

53. The term “improper” refers to an arrangement, act or omission which infringes the existing legislation or the regulations of the sports competition or organisation concerned. It may be aimed at alterations of the course or result of a competition that would be sanctioned by sports regulations only.

54. The term “intentional” means that the arrangement, act or omission is deliberately aimed at improperly influencing the natural and fair course (notably through a foul, penalty or action on the field altering the intermediate result or phase of the game) or the result of a sports competition (through the score, marks, time or ranking, for example).

55. The objective of such an arrangement, act or omission is to obtain an undue advantage (undue because it arises from an improper arrangement, act or omission) for oneself or for another person: this advantage may take the form of financial gain (for example, a bonus paid to the winner by the competition organiser, a bonus paid to a competitor by their employer, a bribe accepted by a competition stakeholder, winnings from a sports bet placed on the

relevant competition or a capital gain realised by the owner of a qualified club who sells their shares), or some other tangible or intangible advantage, such as advancing to a higher level in the competition, or simply the “glory” of winning. The term “undue advantage” therefore does not imply that every manipulation is related to criminal offences such as fraud or corruption.

v. Definition of “sports betting”

56. The definition of “sports betting” refers to the predictions made by wagering a stake on an event occurring during a sports competition in order to obtain winnings. Some specific forms of betting are given as examples: fixed and running odds, spread betting, betting exchanges, pools/totalisators and live betting. The expression “sports betting operators” used in the convention therefore covers all kinds of operators providing sports betting services, land-based or remote, publicly or privately owned, specialised in sports betting or not (bookmakers, specialised sports betting operators, gambling operators and lotteries offering sports betting services) and regardless of the type of sports bet provided.

57. The term “sports” used in this definition refers to sports competitions, as defined in the convention, on which bets are placed. The expression “stake of monetary value” means risking an economic loss.

58. Three different types of betting activities relevant for the convention are described: illegal sports betting, irregular sports betting and suspicious sports betting. The identification of these different types of bets may trigger specific sets of measures by the stakeholders.

59. “Illegal sports betting” refers to any sports betting whose type or operator is not allowed (such as by exclusive rights, a licence or automatic recognition of licences granted by certain third countries) by virtue of applicable law in the jurisdiction of the Party where the gambler is located. The term “applicable law” includes national law, EU law and the law of federated entities. The use of “in the jurisdiction where the consumer is located” may provide a conflict of law rule whereby the applicable law can be identified in order to determine the legality or illegality of a sports bet, when it comes to implementing the prevention measures in the fight against illegal sports betting and the co-operation measures foreseen in this convention (Articles 9, 11, and 12). In order to clarify that the principle of territoriality applies and to prevent conflict of jurisdiction, the choice of using the term “jurisdiction where the consumer is located” rather than “jurisdiction of the consumer” refers to the territory where the consumer is located at the time of placing the bet.

60. “Irregular sports betting” means sports betting activity inconsistent with usual or anticipated patterns of the market in question or which concerns a sports competition whose course has unusual features. Identifying irregular sports betting therefore depends not only on the betting market, but also on the sports competition in question. Unusual features of a competition may be detected by organisations or authorities involved in betting market surveillance, by sports betting operators who follow the competitions on which bets are placed, but also by the sports organisations. An irregular sports bet is liable to be the subject of exchanges of information or an alert issued by the betting monitoring systems, regulatory authorities, sports betting operators, sports organisations or by the national platform foreseen in Article 13. Such an alert may encourage other stakeholders to take precautionary measures and to examine the case in greater depth, if necessary. The criteria (indicators) used to identify irregular sports betting will be developed if necessary by the Convention Follow-up Committee, but the convention does not intend to harmonise at international level the way these criteria are combined or the precise thresholds beyond which betting should be considered “irregular” as such factors depend notably on the characteristics of every national betting market and the sports competition in question.

61. “Suspicious sports betting” means any sports betting activity which, according to well-founded and consistent evidence, appears to be linked to a manipulation of the sports competition to which it relates. Suspicious sports betting will form the subject of exchanges of information and measures on the part of national platforms, public authorities, and where

appropriate, sport betting operators and sports organisations. The criteria for determining suspicious sports betting will, where necessary, be set by the Convention Follow-up Committee. However, the convention does not intend to harmonise at international level the way these criteria are combined or the precise thresholds beyond which betting should be considered “suspicious” as such factors depend notably on the characteristics of every national betting market and the sports competition in question.

vi. Definition of “competition stakeholders”

62. This definition lists all those involved, directly or indirectly, in the organisation and/or running of sports competitions. It covers three types of persons:

- “athletes”: active participants in sports events (sportsmen, sportswomen). “Group of persons” refers to teams in the case of team sports;
- their “support personnel”: trainers, medical personnel, agents, officials of clubs or other entities taking part in the competition, as well as persons acting in this capacity and any other persons working with the athletes, including players’ unions, and
- “officials”, meaning the owners, executives and staff members of the entities which organise and promote sports competitions, as well as any other accredited persons, irrespective of their role, including sponsors or journalists, taking part in the activities of sports organisations. Referees, official judges and stewards are considered to be officials. The term also refers to executives and staff members of sports organisations which recognise the competition.

63. The definitions of “athlete” and “support personnel” are derived from the UNESCO International Convention against Doping in Sport (2005).

vii. Definition of “inside information”

64. The term “inside information” refers to information acquired or possessed by persons who were able to obtain it only because of their position vis-à-vis a particular athlete, sport or competition, which may be used especially for the purpose of manipulating a sports competition or to bet on the competition with an advantage. Examples include information regarding competitors, the conditions and tactical considerations, unless this information has already been made public in accordance with the law or according to the rules and regulations of the competition in question.

CHAPTER II – PREVENTION, CO-OPERATION AND OTHER MEASURES

Article 4 – Domestic co-ordination

65. Under the terms of Article 4, paragraph 1, the Parties to the convention undertake to co-ordinate, in a comprehensive manner, the policies and action undertaken by the public authorities in the fight against the manipulation of sports competitions. This article is not concerned with specific co-operation activities with other stakeholders, such as sports betting operators and sports organisations, like exchanges of information or issuing alerts, which are dealt with elsewhere in the convention.

66. The second paragraph calls on the Parties to encourage sports organisations, competition organisers and sports betting operators to co-operate in the fight against the manipulation of sports competitions and to implement the relevant provisions of the convention. The term “encourage” leaves Parties some flexibility as to the means to be employed, which differ widely according to how the sports movement and betting market are organised at national level.

Article 5 – Risk assessment and management

67. Article 5, paragraph 1, invites the Parties to put in place, if necessary in co-operation with sports betting operators, sports organisations, competition organisers and other relevant organisations the measures required to identify, analyse and evaluate the risks associated with the manipulation of sports competitions.

68. In all circumstances, this risk assessment includes a long-term analysis and development of the capacity to respond to specific risks.

69. Under Article 5, paragraph 2, each Party is to encourage sports organisations, sports betting operators, competition organisers and any other relevant organisation to establish procedures and rules in order to combat manipulation of sports competitions. Each Party adopts, where appropriate, legislative or other measures necessary for this purpose. The reference to “any other relevant organisation” may cover other organisations related to sport (e.g. players’ unions, supporters’ or referees’ organisations.), as well as anti-corruption organisations.

70. Details of the measures expected from sports organisations and operators are given in Articles 7 and 10.

Article 6 – Education and awareness-raising

71. According to Article 6, Parties are to encourage awareness-raising, education, training and research in order to strengthen the fight against the manipulation of sports competitions.

72. This provision covers sports organisations and sports betting operators, although more specific provisions relating to awareness-raising or training within them are foreseen in Articles 7 and 10 of this convention. This provision also covers training of groups such as young athletes, civil servants, judges or awareness-raising of the general public. It may be implemented through means such as an Anti-Manipulation-Code, Internet platforms, E-learning tools, etc.

Article 7 – Sports organisations and competition organisers

73. Article 7 concerns measures to be taken by sports organisations and competition organisers in the fight against the manipulation of sports competitions. It supplements Article 5, going into greater detail. In order to reflect the variety of ways in which the sports movement is organised at national level and to accommodate the principle of the autonomy of sport, this provision calls on the Parties to encourage sports organisations, without specifying how this is to be done.

74. Paragraph 1 contains provisions that are to be implemented within the framework of regulations adopted by sports organisations. These rules and principles are general in scope. Failure to observe such rules may give rise to disciplinary procedures and sanctions.

75. When interpreting the notion of “principles of good governance” mentioned in paragraph 1, reference may be made to Recommendation Rec(2005)8 of the Committee of Ministers to member States on the principles of good governance in sport. For the purposes of this convention, these principles include, *inter alia*, ensuring transparent proceedings in financial and administrative issues and democratic structures.

76. Paragraph 1.a calls for the prevention of conflicts of interest among competition stakeholders by proposing that they be prohibited from betting on sports competitions in which they themselves are taking part, and that the misuse or dissemination of inside information be forbidden. The encouraged ban on betting on one’s own competitions relates to competitions in which the stakeholders are directly involved and represents the minimal scope of application of such a ban. Sports organisations and the Parties may extend this

prohibition to include all competitions in the tournament (for example, the championship) or event (for example, the Olympic Games) in which competition stakeholders are taking part. The prohibition on betting on one's own competition is already part of the disciplinary regulations of several national and international sports federations.

77. Article 7.1.b provides that sports organisations should consider adopting rules to ensure that they honour their contractual, statutory and other obligations. This is the case, for instance, in countries that have a licensing system which requires clubs to fulfil certain criteria in order to participate in competitions. Such a system may be used to compel clubs to meet their obligations, among others towards athletes. Other mechanisms may be considered to ensure compliance with contractual, statutory and other obligations. The aim is to provide sports organisations and professional athletes with proper conditions in which to pursue their activities.

78. Paragraph 1.c specifies that in the event of any approach or incentive to behave in a certain way, competition stakeholders should be required to report the full details immediately. This requirement covers “any approach or incentive which could be considered an infringement of the rules against the manipulation of sports competitions”. The rules to which it refers may be statutory provisions, but also regulations adopted by sports organisations or competition organisers. This provision defines an internal rule of the sports movement which covers a wide range of offences, mainly disciplinary. It is for the sports organisations concerned to decide what the procedure should be and which body or person should be responsible for gathering information and taking further action (e.g. disciplinary inquiry, disciplinary procedure, referral to the courts and referral to the national platform.). Many national and international sports organisations have already integrated this rule in their disciplinary regulations.

79. Paragraph 2 of Article 7 contains measures which sports organisations are encouraged to adopt and which may be implemented through procedures, policies, practices or even regulations.

80. Paragraph 2.a calls for the introduction of tight and efficient controls of sports competitions exposed to risks of manipulation. Such supervisory procedures include provisions for acquiring the necessary expertise to assess and follow up warnings issued by betting monitoring systems, but also supervision of sporting events with sport experts (e.g. representatives, stewards or referee inspectors). This practical follow-up does not in itself imply any public disclosure.

81. Paragraph 2.b specifies that where suspicious activities linked to the manipulation of sports competitions come to the attention of sports organisations (notably as a result of reports received under paragraph 1.c, or internal disciplinary inquiries), they must inform the relevant public authorities and/or national platforms. In this context, the expression “linked to the manipulation of sports competitions” should include at the very least activities which could constitute criminal offences. They may also include, however, other suspicious activities or information about conduct which, although not a criminal offence, could form the subject of exchanges of information (via the national platform) with other authorities or organisations, within the country or abroad.

82. Paragraph 2.c mentions effective mechanisms to enable competition stakeholders to provide information. These mechanisms are in addition to the reporting requirement set out in paragraph 1.c. In order to be effective, they must enable competition stakeholders to report activities in confidence. The recipient of the information must be of the utmost reliability and integrity. In particular, they must not themselves be involved in the competition (e.g. club managers). Such mechanisms may include, for example, a telephone helpline, a mobile application, an independent place, an independent and trustful ombudsperson with the obligation of secrecy or the possibility of remaining anonymous when reporting an activity or during proceedings. They will also include measures which are the responsibility of sports organisations and which are designed to protect whistle-blowers who report suspicious activities to the competent bodies of the sports organisation, or to the authorities (e.g. anonymity, protection against wrongful dismissal or assistance in their subsequent career).

83. Competition stakeholders including young athletes should be made sufficiently aware of the issue of manipulation of sports competitions (paragraph 2.d). This can be done through education and training provided by sports organisations or players' unions, for example.

84. It is noted that supporters, although not "competition stakeholders" in the strict sense, should nevertheless be informed and involved in the fight against the manipulation of sports competitions.

85. Under paragraph 2.e, sports organisations should also be asked to delay appointing officials until the latest possible stage before the competition. This can help to protect the integrity of referees, for example.

86. The adoption and implementation of disciplinary sanctions applied by sports organisations, such as suspension from other sports activities, must be done in accordance with the national law. This includes, in particular, respecting human rights and the principle of proportionality, as mentioned earlier in the convention.

87. These disciplinary procedures must respect the general principles of law recognised at international level and guarantee the fundamental rights of the suspected athletes. According to these principles, which are reiterated in Convention 135, the investigating body must be separate from the disciplinary body, those suspected have the right to a fair trial and the right to be assisted or represented, and there must be clear and enforceable provisions allowing for a right of appeal, which implies that disciplinary sanctions imposed by sports organisations must be subject to an appeal before a court or an arbitration body.

88. Any disciplinary sanctions imposed by sports organisations should form the subject of mutual recognition procedures by foreign sports federations and by international federations. Such mutual recognition is dependent on the rules of international sports organisations on implementation of disciplinary sanctions and measures. This provision was inspired by the standards applied in the fight against doping.

89. Paragraph 7.4 stipulates that disciplinary liability shall in no way exclude any criminal, civil or administrative liability within the framework of state court sanctions. The sports disciplinary sanctions are within a different jurisdiction of criminal law and are driven into separate standards applied according to the procedures and other types of evidence. Also, disciplinary sanctions should not be classified as criminal sanctions. Therefore, the "non bis in idem" principle does not exclude that an act is punishable in both disciplinary and criminal courts. The same act may be punished by disciplinary procedure without coming under criminal law, or criminally without incurring disciplinary sanctions.

Article 8 – Measures regarding the financing of sports organisations

90. Article 8 concerns measures to ensure the financial transparency of sports organisations, and Parties' financial support for these organisations in the fight against the manipulation of sports competitions. The article also provides for the possibility of withdrawing financial (or other) support from sports organisations which do not respect the regulations regarding the fight against the manipulation of sports competitions, or from competition stakeholders sanctioned for the manipulation of sports competitions.

91. Paragraph 1 calls for appropriate transparency regarding the funding of sports organisations when they are financially supported by a Party. This provision is concerned not with the use of public funds but rather with the kind of transparency that is expected in terms of governance and funding (maintenance of proper accounts, for example, by identifying funding sources). The obligation by Parties to ensure appropriate transparency of those organisations "financially supported by the Party" is a minimum standard set out by the convention. The Parties whose national legal systems allow or require comparable transparency with regard to a broader group of organisations, may apply it. Nonetheless, certain Parties may not be able to achieve wider transparency due to the limitations imposed by their legal system.

92. Bearing in mind that non-governmental sports organisations play a key role in the fight against the manipulation of sports competitions, paragraph 2 asks governments to consider the possibility of supporting sports organisations, where appropriate, for example by funding suitable mechanisms for combating the manipulation of sports competitions. The form of any support is left to the discretion of the Parties. It might be an example that the support is through direct subsidies or grants, or by taking into account the cost of any such mechanisms and efforts deployed by sports organisations when determining the overall subsidies or grants to be awarded to these organisations.

93. Under paragraph 3, each Party is requested, where necessary, to consider withholding financial support or inviting sports organisations to withhold financial support from competition stakeholders sanctioned for manipulating sports competitions, for the duration of the sanction. This paragraph echoes a similar provision in Convention 135 (Article 4.3.b). Parties should have a framework authorising its possible implementation. This provision shall be implemented in accordance with the principles of legality and proportionality.

94. Lastly, paragraph 4 invites Parties, where appropriate, to withhold some or all of their support from any sports organisation that fails to effectively apply regulations for combating the manipulation of sports competitions. It is emphasised that this provision should be implemented in accordance with the principles of legality and proportionality.

Article 9 – Measures regarding the betting regulatory authority or the other responsible authority or authorities

95. Alongside sports organisations, the betting regulatory authorities (or other responsible authorities) have a key role to play in ensuring exchanges of information between sports organisations and sports betting operators, and in co-ordinating the rules governing sports betting operators as well as a duty to supervise compliance with these rules. The exercise of certain functions need to be fulfilled by public authorities: the coordinated enforcement of some preventative measures by all the sports betting operators should be ensured by a public authority. Similarly, the co-ordination of some exchange of information, in compliance with the relevant national and international personal data protection laws and standards, as set out in Article 14 of the convention and in preserving the legitimate interest of both the sports betting operators and sports organisations, should be fulfilled by a neutral person or institution. Article 9.1 obliges each Party's competent authorities which are responsible for implementing sports betting regulations, to fight against the manipulation of sports competitions in relation to sports betting, through measures including where appropriate those referred to in letters a to f.

96. In general, the term "regulatory authority" refers to a public authority or authorities tasked by law with contributing to the provision of a service and to the proper functioning of a market involving in general multiple suppliers for the benefit of consumers. Within the framework of this convention "Regulatory authority" is used as a generic term to mean the authority responsible for the sports betting market. This indirect reference to a market model involving several suppliers should not be misleading, as the present convention is meant to apply whatever the organisational structure of the market, and does not purport to express an opinion for or against opening up the betting market to competition. The authority in question could equally well be the supervisory authority for a state lottery operating in a monopoly market, or the authority responsible for monitoring activities in cases where a ban is in place. These authorities do not define the policy of sports betting market regulations, e.g. opening up the market, but are responsible for co-ordinating its implementation. It should be for each state to decide how supervisory duties of the manipulation of the sport competitions are carried out. Moreover, several authorities may co-exist within the same Party in cases where the sports betting market is organised at the level of federated entities of a federal state or if responsibilities are divided between several authorities.

97. Paragraph 1.a refers to the exchange of information, in a timely manner, with and between other competent authorities or the national platform about illegal, irregular or suspicious sports betting and other infringements of the regulations established in accordance with the present convention. While this provision establishes the principle of the introduction of exchanges of information, the regulatory authority or the other responsible authority or authorities are competent to determine, on a case by case basis, whether such exchanges are appropriate and the type of information to be provided.

98. Paragraph 1.b refers to the limitation, where appropriate, of the supply of sports betting, as a relevant measure to combat the manipulation of sports competitions in relation to sports betting. This limitation is expected to take effect following consultation with the national sports organisations and sports betting operators. This provision states that, in particular, sports competitions which are designed for those under the age of 18 and where the organisational conditions and/or stakes in sporting terms are inadequate should not be subject to sports betting. Thus, during the drafting process it was underlined that offering bets on competitions in which mostly under 18s participate, exposes them to the risks of being approached for manipulation. The expression “where the organisational conditions and/or stakes in sporting terms are inadequate” is likely to encompass non-official competitions such as friendly matches with no impact on rankings, or of little interest in sporting terms, therefore nothing at stake, making these competitions easy to manipulate. The Convention Follow-up Committee may specify criteria for this limitation in a recommendation to the Parties of this convention.

99. Paragraph 1.c states that competition organisers should be provided in advance with information about the types and the objects of sports betting products. Such information includes in principle the operator, as well as the type and object of the bets. It does not include information about the amounts, the transactions, the total value of the bets or the identity of the consumers. The way in which information is to be provided to competition organisers may be decided by the regulatory authority or the other responsible authority or authorities. The purpose of such information is to support the efforts of competition organisers to identify and manage the risks of manipulation of sports competitions they organise, in particular when these risks are identified within the risk assessment referred to in Article 5, paragraph 1. It allows, for example, competition organisers or sports organisations to put in place effective arrangements for supervising the course of the competition and, where appropriate, to establish a connection between unusual behaviour during a game and any bets that might have been offered on the competition in question.

100. Paragraph 1.d refers to measures that should be taken to ensure the systematic use of traceable means of payment for financial flows above a certain threshold, to be set by each Party. This traceability, allowing the identification of the senders, recipients and the amounts of these flows, can be important in cases where there is an investigation, whether in combating the manipulation of sports competitions or with regard to the fight against money laundering or other fraudulent activity.

101. Under paragraph 1.e, the responsible authority or authorities should also provide for appropriate mechanisms, in co-operation with sports organisations, and, where appropriate, between sports organisations and sports betting operators, to prevent competition stakeholders from betting on competitions in which they themselves are taking part. The rule prohibiting competition stakeholders from betting on their own competitions should be enshrined at disciplinary level, by sports organisations (cf. Article 7.1.a). Ensuring compliance with this rule, however, is not a task for sports organisations alone. Each Party has a certain amount of freedom to make their own arrangements.

102. Paragraph 1.f states that betting, in respect of which an appropriate alert has been issued, may be suspended, that is to say, no further bets may be accepted on the object in question. The competent authority may delegate the management of alerts to a specialised unit. The article does not specify whether bets placed earlier on the same object should be able to be declared void or should stand. It is for each Party to determine what the procedure should be in such cases, depending on the applicable law. The reference to an “appropriate” alert means that each type of alert does not necessarily lead to the automatic suspension of betting. It is up to the Parties to define which alerts may trigger this mechanism.

103. Paragraph 2 requires the Parties to communicate to the Secretary General the names and addresses of the betting regulatory authority or the other responsible authority or authorities. According to the practice on such notifications, Parties are expected to notify this information, by means of a declaration addressed to the Secretary General of the Council of Europe, at the time of signature or when depositing its instrument of ratification, acceptance or approval. They subsequently may, at any time and in the same manner, change the terms of their declaration.

Article 10 – Sports betting operators

104. The requirements laid down for sports betting operators in this provision are similar to those used for the sports movement. It deals first and foremost (paragraph 1) with the prevention of conflicts of interest and misuse of inside information by any natural or legal persons involved in providing betting products. In particular, it calls on the Parties to place restrictions on:

- persons involved in providing sports betting products betting on their own products (paragraph 1.a);
- abuse of a position as sponsor or part-owner of a sports organisation to facilitate the manipulation of a sports competition or to misuse inside information (paragraph 1.b);
- a competition stakeholder being involved in compiling betting odds for the competition they are involved in (paragraph 1.c);
- the offering of bets on a competition in which the sports betting operator controls the competition organiser or one of the competition stakeholders or is itself controlled by a competition organiser or a competition stakeholder (paragraph 1.d).

105. It should be noted that paragraph 1.b does not introduce a ban on sports sponsorship by sports betting operators. This provision does, however, highlight a risk of conflict of interest which needs to be recognised by the competent authorities and punished in cases where an abuse has occurred. These risks of abuse include using their privileged position as sponsors giving them an advantage over their customers or in looking to influence the course of competitions.

106. According to the generally accepted definition, a conflict of interest arises from a situation in which a person has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties. A person's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or had business or political relations. It includes also any liability, whether financial or civil, relating thereto.

107. This definition, which can serve as a reference when interpreting the concept of conflict of interest, is notably applied to public officials in Recommendation No. R (2000) 10 of the Committee of Ministers to member States on codes of conduct for public officials.

108. Paragraph 2 requires the Parties to encourage the introduction by sports betting operators, and through them international organisations of sports betting operators, of programmes to raise awareness among owners and employees of the consequences of and the fight against manipulation of sports competitions, through education, training and the dissemination of information.

109. Lastly, paragraph 3 requires the Parties to adopt such measures as may be necessary to oblige sports betting operators to report irregular or suspicious sports betting to the betting regulatory authority or the other responsible authority or authorities and/or the national platform. Moreover, the convention cannot commit national public authorities to cooperate (e.g. exchange information) with organisations which are considered as illegal.

Article 11 – The fight against illegal sports betting

110. Illegal sports betting operators represent a threat in the area of manipulation of sports competitions, because they may operate without any control and may not co-operate with the sports movement. In addition, sports betting operators whose activities are illegal under the applicable law of the jurisdiction where their customers are located may be unwilling to share information highlighting the illegal nature of their activity. These two situations complicate the task of the competent authorities and sports organisations which, as a result, have great difficulty in identifying all the sports competitions which might be endangered through match-fixing and do not have full access to information about this illegal segment of the market.

111. Article 11 requires the Parties to consider adopting the most suitable means, in accordance with the applicable law, to combat illegal sports betting. In doing so, the Parties are free to explore various direct and indirect ways of restricting access to physical and online operators (paragraph a): e.g. closing down operators, forcing them to operate lawfully or blocking access to their websites. Article 11 also provides that consideration be given to blocking financial flows between illegal sports betting operators and consumers (paragraph b), to prohibiting advertising for these same operators (paragraph c) and to introducing measures to raise consumers' awareness of the risks associated with illegal sports betting (paragraph d). The exact scope to such measures shall be defined, where appropriate, by each Party, in accordance with the applicable law.

CHAPTER III – EXCHANGE OF INFORMATION

Article 12 – Exchange of information between competent public authorities, sports organisations and sports betting operators

112. The fight against the manipulation of sports competitions requires substantial exchanges of information on various issues between the relevant public authorities, including law enforcement and judicial authorities, sports organisations, competition organisers, sports betting operators and national platforms. Under Article 12, the Parties undertake to facilitate such exchanges of information and overall co-operation between the stakeholders involved, in compliance with the domestic legislation. The latter naturally includes domestic law resulting from the implementation of international legal instruments and, where appropriate, the directly applicable provisions of international treaties. In particular, the standards relating to the protection of personal data and the confidentiality of investigations must be taken into account. This provision requires Parties, in compliance with the law, to offer the maximum assistance to the other Parties and the organisations concerned, by allowing the spontaneous exchange of information where there are reasonable grounds to believe that offences or infringements of the laws referred to in this convention have been committed, and providing, upon request, all necessary information to the national, foreign or international authority requesting it. The wording of this article grants the Parties a margin of discretion. This provision does not involve a strict requirement to communicate specific types of information, but provides a guide to the purpose of these exchanges.

113. The facilitation of these exchanges of information requires the setting up of mechanisms for communicating the relevant information gathered to each type of stakeholder, where such information may assist in the undertaking of risk assessment referred to in Article 5 and namely the advanced provision of information about the types and object of the betting products to the competition organisers, and in initiating or carrying out investigations or proceedings concerning the manipulation of sports competitions (paragraph 1). "Relevant information" could mean any information gathered by a stakeholder which may be of interest to another stakeholder in the context of its involvement in the fight against the manipulation of

sports competitions. Such information may, for instance, be the volume of bets registered for a particular competition, an unusual change in odds or the geographical location of persons placing irregular bets. It may also include rumours about manipulation received from a competition. The stakeholders may give consideration to jointly defining the type of such relevant information.

114. Upon request, the authority or organisation which receives such information must inform the organisation which shared the information of the follow-up to the communication (paragraph 2). Domestic legislation may, however, impose restrictions. For instance, a prosecutor investigating a criminal case on the basis of information communicated by private organisations would not be able to pass on certain information about the case to these organisations, due to the investigation or prosecution confidentiality.

115. With regard to the fight against illegal betting, each Party must explore possible ways of developing or enhancing co-operation and exchange of information, as set out in Article 12 of the convention (paragraph 3). For instance, any Party which identified a sports betting operator offering services contravening the legislation in force in the jurisdiction where the gambler was located could notify any other Parties likely to be concerned.

116. The reference to Article 14 of this convention recalls that exchanges of information may relate to personal data and that the relevant protection laws and standards must be respected.

Article 13 – National platform

117. Article 13 provides for the identification of a national platform responsible for the fight against the manipulation of sports competitions by each Party.

118. The identification of the body fulfilling the function of national platform will be made in accordance with national law, and at the Parties' discretion, taking into account existing structures and the distribution of national administrative functions. A public authority would provide a neutral framework for co-operation between private stakeholders from different sectors and a suitable framework for the exchange of information. Therefore, national platforms are also implicitly covered by the generic references made to "competent public authorities". However, this feature is not explicitly specified in the provisions of the convention, so as to give the Parties a margin of discretion in identifying their platform.

119. The national platform serves as an information hub, collecting and disseminating information relevant to the fight against manipulation of sports competitions to the relevant organisation and authorities (paragraph 1.a).

120. In particular, the national platform is responsible for receiving, centralising and analysing information on irregular and suspicious bets placed on sports competitions taking place on the territory of the concerned Party and, where appropriate, issuing alerts (paragraph 1.c) and transmitting information to public authorities, sports organisations, and/or sports betting operators, in connection with possible breaches of legislation or sports regulations (paragraph 1.d). The information may, for instance, concern the placing of bets by a person involved in the competition or irregular or suspicious bets. However, this article does not involve a strict requirement to transmit specific types of information.

121. The national platform, the name and address of which must be communicated by each Party to the Secretary General of the Council of Europe (paragraph 2), is responsible for the co-ordination of the fight against the manipulation of sports competitions at national level (paragraph 1.b) and must co-operate with all organisations and relevant authorities at national and international level, including national platforms of other states (paragraph 1.e). This may include co-ordinating the diffusion of public information. Given the transnational nature of the risks related to the manipulation of sports competitions, it is very important for information to be exchanged quickly between the Parties.

122. When the information exchanged constitutes personal data, it should be processed subject to the relevant national and international personal data protection laws and standards, as set out in Article 14 of the convention, in particular those defined under the Convention 108.

123. Paragraph 2 requires the Parties to communicate to the Secretary General the names and addresses of the national platform. According to the practice on such notifications, Parties are expected to notify this information, by means of a declaration addressed to the Secretary General of the Council of Europe, at the time of signature or when depositing its instrument of ratification, acceptance or approval. They subsequently may, at any time and in the same manner, change the terms of their declaration.

Article 14 – Personal data protection

124. The fight against the manipulation of sports competitions concerns many sectors of activity: administrative co-operation, consumer protection, child protection, combating fraud and money laundering, tackling identity theft and other forms of cybercrime, ensuring the security of gambling equipment, safeguarding the integrity of sport and combating match-fixing. Moreover, provision is made for exchanges of information between a wide variety of entities (public authorities, online betting operators, sports organisations in the broad sense, national, federal and international, and competition organisers). It is important therefore to ensure the protection of personal data.

125. Under Article 14, the Parties undertake to comply with relevant (national and international) personal data protection laws and standards when drawing up the measures needed to combat the manipulation of sports competitions and, in particular, when exchanging information between the public authorities and the organisations covered by the convention. At international level, the data protection standards are set out in particular in Convention 108 and the 2001 protocol thereto regarding supervisory authorities and trans-border data flows (2002, ETS No. 181). Implementation of the present convention cannot in any way prejudice the implementation of Convention 108 by the Parties who have ratified it.

126. Paragraph 2 specifies the key principles mentioned indirectly in paragraph 1. The principles of lawfulness, adequacy, relevance and accuracy regulate the collection, processing and exchange of personal data. The processing of personal data (a generic term covering the collection, recording, alteration and exchange, of the data) is actually the vital tool for the international co-operation on which the fight against the manipulation of sports competitions should be based.

127. Given that the organisation of sports competitions and the activities of sports betting operators generate a large volume of personal data, there is a risk that the data shared includes data that goes beyond the purposes pursued or of the data being kept longer than necessary. Paragraph 3 therefore provides that the Parties must pass legislation so that the stakeholders ensure that data are exchanged solely for the purposes of the convention and that the data sharing does not go beyond the strict minimum needed for the pursuit of the stated objectives of the sharing. Parties might wish to consider the setting up of consultation committees involving the various stakeholders at national level and personal data protection experts to agree to the type of data to be shared and the time they should be preserved, as one of the means of addressing these requirements for security and integrity and, more broadly, improving the effectiveness of co-operation between stakeholders and ensuring greater protection in terms of how personal data are used.

128. Lastly, under paragraph 4, the Parties must encourage the stakeholders to ensure the security of the data, the integrity and availability of computer systems and the identification of their users. The security of the systems and exchanges can also be a tricky issue because the overall mechanism is only as secure as the lowest level of security adopted by the stakeholders. Article 14, paragraph 4, therefore requires each Party to invite the various stakeholders to implement the technical means required to ensure the security of the data exchanged and to guarantee their reliability and integrity as well as the availability and

integrity of the systems and the identification of their users. The consultation committees may be tasked with checking the security of the systems and exchanges.

CHAPTER IV – SUBSTANTIVE CRIMINAL LAW AND LAW ENFORCEMENT CO-OPERATION

Article 15 – Criminal offences relating to the manipulation of sports competitions

129. The purpose of Articles 15 to 18 is to make sure that the manipulation of sports competitions is covered by the domestic legislation of the Parties in such a way that manipulation of sports competitions may be punished in accordance with their seriousness, when they involve certain conduct.

130. Article 15 of the convention seeks to make sure that manipulation of sports competitions may be criminally sanctioned when it either involves coercion, corruption or fraud, as defined by domestic law. It does not require the establishment of a specific and uniform offence for the manipulation of sports competitions. Depending on the definition of existing offences and the related case law, the Parties may decide to rely on existing general criminal legislation (e.g. on extortion, corruption or fraud), or to establish new offences (e.g. on manipulation of sport competitions) so that the conduct concerned (alternatively of manipulations involving either coercion, corruption or fraud) is covered appropriately. This means that if the mentioned practises are criminalised by either one of the offences, it is not required to criminalise them by (one of) the others too.

131. The manipulation of sports competitions is understood here as defined in Article 3.4 of this convention. Insofar as the definition of criminal offences relating to the manipulation of sports competitions refers to the definition of manipulation of sports competitions which itself includes an element of intent, such an element is necessary to characterise these criminal offences.

132. Some acts relating to the manipulation of sports events are in principle already covered by existing criminal offences. This may apply to acts such as extortion, blackmail, poisoning or violence to which competition stakeholders, both athletes and otherwise, and those around them may be subjected. Such acts, which may be described with the generic term “coercion”, are covered by existing offences. However, this reference is a reminder that such conduct is among the methods employed in certain manipulations of sports competitions.

133. Corrupt practices are frequent when it comes to the manipulation of sports competitions. For example, offering a bribe to an amateur referee in exchange for him influencing the course of the game in favour of a competitor, or influencing a competitor to accept to lose a game in exchange for a promise to play for another team the next season, may – in coherence with domestic law – constitute such corrupt practices.

134. Irrespective of practices of coercion or corruption, the manipulation of sports competitions may take the form of agreements freely entered into. Even in such situations, they may fall under the domestic law on fraud in particular when there is fraudulent intent to secure, without right, an economic benefit for the offender or for a third party, causing a loss of property to another person. Such a benefit could take the form, for example, of a bonus paid to the winner by the competition organiser, a bonus paid to a competitor by their employer, winnings from a sports bet placed on the relevant competition, or a capital gain realised by the owner of a qualified club who sells their shares. Victims of fraudulent behavior, i.e. those who suffer a loss due to the relevant fraudulent manipulation, may be, for example, other persons having placed bets, the opposing team, or, where applicable, the national or international federation responsible for organising the competition.

Article 16 – Laundering of the proceeds of criminal offences relating to the manipulation of sports competitions

135. Article 16, paragraph 1, requires Parties to adopt, in their domestic law, the measures necessary to establish, as criminal offences, conduct involving money laundering as defined, for example, in one of the three conventions mentioned below, when the predicate offence giving rise to profit is one of those referred to in Articles 15 and 17 of this convention, and in any event in the case of extortion, corruption and fraud.

136. In order not to establish a new definition of conduct involving money laundering, the convention refers to three customary definitions, namely those in:

- Article 9, paragraphs 1 and 2, of Convention 198;
- Article 6, paragraph 1, of the United Nations Convention against Transnational Organised Crime, and
- Article 23, paragraph 1, of the United Nations Convention against Corruption.

137. The offences of extortion, corruption and fraud are included in Appendix 2 to Convention 198, which sets out a minimum range of offences to be regarded as predicate offences of money laundering. These offences are also covered in the recommendations of the Financial Action Task Force (FATF), laying down the international standards in this area.

138. Laundering, whose objective is to disguise the illicit origin of proceeds, always requires a predicate offence from which the said proceeds originate.

139. Under this definition, in accordance with the above-mentioned conventions, the expression “predicate offence” means all offences such as defined by these conventions as a result of which proceeds were generated that may become the subject of an offence or, in other words, the offence that generated such proceeds.

140. For many years, anti-laundering efforts focused on drug proceeds, but recent international instruments, including Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, ETS No. 141, hereafter “Convention 141”), Convention 198 and also the 40 Recommendations of the Financial Action Task Force (FATF), recognise that a wide range of offences (e.g. fraud, terrorism, trafficking in stolen goods and arms) can generate proceeds which may need to be laundered through subsequent recycling in legitimate businesses. Convention 141 already applies to the proceeds of any kind of criminal activity, including corruption, unless a Party has entered a reservation to Article 6, thereby restricting its scope to proceeds from particular offences or categories of offences. The authors of Convention 141 felt that, given the proven close links between corruption and money laundering, it was of primary importance that the convention also criminalised the laundering of corruption proceeds.

141. Paragraph 2 allows the Parties, when deciding on the range of offences to be covered as predicate offences under each of the categories mentioned in paragraph 1, to decide, in accordance with their domestic law, how they will define those offences and the nature of any particular elements of those offences that make them serious.

142. The purpose of paragraph 3 of Article 16 of the Convention against the Manipulation of Sports Competitions is to require Parties to consider including the manipulation of sports competitions in their money laundering prevention framework. This prevention framework, which includes requirements of due diligence with respect to consumers, keeping records and reporting, corresponds to measures such as those mentioned in Article 13 of Convention 198, in Article 7 of the UN Convention against Transnational Organized Crime or in Article 14 of the UN against Corruption. It was noted that Article 16.3 is not a provision of substantive

criminal law and law enforcement co-operation. However, it was kept together with the other provisions on money laundering to ensure unity.

Article 17 – Aiding and abetting

143. The purpose of Article 17 is to establish, as criminal offences, aiding or abetting the commission of the offences covered by Article 15 of the convention.

144. Liability for aiding or abetting arises where the person who commits a crime referred to in this convention is aided by another person who knowingly aids and abets by facilitating the preparation or commission of the offence. Therefore, aiding or abetting must be committed intentionally.

145. This provision reflects the one in Article 5.1.b of the United Nations Convention against Transnational Organised Crime, which extends the convention offences to any person who aids and abets by facilitating and counselling the commission of the offences.

146. The manipulation of sports competitions is often carried out by organised crime networks comprising numerous individuals, each of whom contribute in their own way, either directly or indirectly, to the commission of the illegal activities. That was why it was important to include in the convention's offences, all acts that intentionally contribute to the offences.

Article 18 – Corporate liability

147. Like the Article 16 concerning the laundering of the proceeds of criminal offences relating to manipulation of sports competitions, Article 18 seeks to include the usual references to corporate liability and link them to the main provisions applicable to the manipulation of sports competitions.

148. The term "legal person" within the meaning of Convention 173 refers to any entity having such status under the applicable national law. For the purpose of active corruption offences, however, the definition should exclude the state or other public bodies exercising state authority, such as ministries or local government bodies, as well as public international organisations such as the Council of Europe. The exception applies to the different levels of government: State, regional or local entities exercising public powers. The reason is that the responsibilities of public entities are subject to specific regulations usually embodied in administrative law or, in the case of public international organisations, in agreements or treaties. It is not, however, aimed at excluding the responsibility of public enterprises.

149. Under Article 18, paragraph 1, legal persons shall be held liable if the following conditions are met. Firstly, the offence is one of those referred to in Articles 15 to 17 of the convention. The second condition is that the offence must have been committed for the benefit of, or on behalf of, the legal person by any natural person, acting either individually or as a member of an organ of the legal person, who has a leading position within the legal person. The leading position assumed to exist in the three situations described (a power of representation or authority to take decisions or to exercise control) demonstrates that such a natural person is legally or in practice able to engage the liability of the legal person.

150. Paragraph 2 states that according to the Parties' domestic law, the liability of a legal person may be criminal, civil or administrative.

151. Paragraph 3 expressly mentions Parties' obligation to extend corporate liability to cases where the lack of supervision within the legal person makes it possible to commit the offences referred to in Articles 15 to 17. It seeks to hold legal persons liable for the omission by persons in a leading position to exercise supervision over the acts committed by subordinates acting on behalf of the legal person. A similar provision also exists in the Second Protocol to the European Union Convention on the Protection of the Financial Interests of the European

Communities. Like paragraph 1, the nature of the liability is to be decided by the Contracting Party itself.

152. Paragraph 4 provides that the liability of legal persons is without prejudice to the criminal proceedings against natural persons who are perpetrators of, or accessories to, the criminal offences referred to in paragraph 1.

CHAPTER V – JURISDICTION, CRIMINAL PROCEDURE AND ENFORCEMENT MEASURES

Article 19 – Jurisdiction

153. This article lays down various requirements whereby Parties must establish jurisdiction over the offences with which the convention is concerned.

154. Paragraph 1.a is based upon the principle of territoriality. Each Party is required to establish jurisdiction for the offences referred to in the convention that are committed in its territory.

155. Paragraphs 1.b and 1.c are based on the principle of personal jurisdiction of the state, which is well established in international law. It allows each Party to assert its jurisdiction over offences committed on board ships flying its flag or aircraft registered in that Party. This basis of jurisdiction is primarily intended to apply when the ship or aircraft is located in a maritime area or airspace that is not within the jurisdiction of any State (on the High Seas for example). If, however, an offence is committed on board a ship flying the flag of one State but within the territorial waters of another State, the latter may exercise its territorial jurisdiction.

156. The first part of paragraph 1.d is based on the nationality principle. The nationality theory is most frequently applied by countries with a civil-law tradition. Under it, nationals of a country are obliged to comply with its law even when they are outside its territory. Under this provision, if one of its nationals commits an offence abroad, a Party is obliged to be able to prosecute him/her. The second part of paragraph 1.d applies to persons having their habitual residence in the territory of the Party. It provides that Parties shall establish jurisdiction to investigate acts committed abroad by persons having their habitual residence in their territory. It therefore applies to the case of foreign athletes having their habitual residence in one country who commit criminal acts during competitions taking place in other countries.

157. Paragraph 2 refers to the possibility for Parties to make reservations on rules on jurisdiction laid down in paragraph 1.d.

158. Paragraph 3 concerns the principle of “aut dedere aut judicare” (extradite or prosecute). Jurisdiction established on the basis of this paragraph is necessary to ensure that Parties which refuse to extradite a national have the legal ability to undertake investigations and proceedings domestically instead, if asked to do so by the Party which requested extradition under the terms of the relevant international instruments.

159. Given the increasingly international nature of the manipulation of sports results, it will sometimes happen that more than one Party has jurisdiction over some or all of the participants in an offence established under the convention. In order to avoid duplication of procedures and otherwise facilitate the efficiency or fairness of proceedings, the Parties involved are required under paragraph 4 to consult in order to determine the most appropriate jurisdiction for the purposes of prosecution. In some cases, it will be most effective for them to choose a single jurisdiction for prosecution; in others, it may be best for one country to prosecute some alleged perpetrators, while one or more other countries prosecute others. Either method is permitted under this paragraph. Finally, the obligation to consult is not absolute; consultation is to take place “where appropriate”. Thus, for example, if one of the Parties knows that consultation is not necessary (e.g. it has received confirmation that the other Party is not planning to take action), or if a Party is of the view that consultation may impair its investigation or proceedings, it may delay or decline consultation.

160. Paragraph 5 of this article enables Parties to establish other types of criminal, civil and administrative jurisdiction according to their domestic law. Thus, some states adopt a broad reading of their territorial and personal jurisdiction. The principle of effectiveness, for example, allows a State to be competent in respect of an offence committed abroad by a foreigner but only when the offence has effects/consequences in the State's territory.

Article 20 – Measures to secure electronic evidence

161. Offences relating to the manipulation of sports competitions may involve the use of information and communication technologies, as well as the commission of acts considered, according to applicable law, as violations of existing standards in the fight against cybercrime. It may include, for example, illegal interception of data for the purposes of blackmail, computer-related forgery aimed at altering the publication of information on sports competitions or related betting, illegal system interference aimed at cancelling a betting transaction in the case of an unsuccessful manipulation.

162. Furthermore, information and communication technologies can be used to commit an offence, for example passing on instructions to an accomplice to intimidate a competition stakeholder or to place a bet.

163. Lastly, these computer systems, even if not directly used to commit an offence, can record information which can be relevant for establishing facts: an unexplained variation of odds, unusual transactions by customers located in the same region, or the records of incorrect transmission of results of certain sports competitions, can provide useful clues in the course of investigations into manipulation of sports competitions.

164. Article 20 aims to give the competent national authorities the possibility, in the course of criminal investigations into offences referred to in Articles 15 to 17, *inter alia*, to order or similarly obtain the expeditious preservation of stored computer data, the expedited preservation and disclosure of traffic data, production orders, search and seizure of stored computer data, the real-time collection of traffic data and interception of content data. Such measures shall be in compliance with the relevant national and international personal data protection laws and standards, as set out in Article 14 of the convention.

165. Expedited preservation of stored computer data and expedited preservation and partial disclosure of "traffic data" refers only to data preservation, and not data retention. It does not mandate the collection and retention of all, or even some, data collected by a service provider or other entity in the course of its activities. The preservation measures apply to computer data that "has been stored by means of a computer system", which presupposes that the data already exists, has already been collected and is stored. They do not apply to the real-time collection and retention of future traffic data or to real-time access to the content of communications. Article 20 does not imply an obligation to ensure that real-time collection of traffic data or interception of content data are applicable measures according to domestic law, when investigating offences referred to in Articles 15 to 17 of the convention.

166. The following definitions, derived from Articles 16, 17, 19, 20, and 21 of the Convention on Cybercrime (2001, ETS 185, hereafter "Convention 185") may provide guidance for interpreting the following concepts. However, these specific investigation measures are given here as examples and Article 20 does not impose an obligation to implement all of them.

167. Expedited preservation of stored computer data can be understood as the set of measures enabling the competent authorities to order or similarly obtain the expeditious preservation of specified computer data, including traffic data, that has been stored by means of a computer system, in particular where there are grounds to believe that the computer data is particularly vulnerable to loss or modification. Where a Party addresses for this purpose an order to a person to preserve specified stored computer data in the person's possession or control, the Party shall adopt such legislative and other measures as may be necessary to oblige that person to preserve and maintain the integrity of that computer data for a period of time as long as necessary, which, according to Convention 185, cannot exceed ninety days,

to enable the competent authorities to seek its disclosure. A Party may provide for such an order to be subsequently renewed. This procedure can be combined with measures to oblige the custodian or other person who is to preserve the computer data to keep confidential the undertaking of such procedures for the period of time provided for by its domestic law.

168. Expedited preservation and partial disclosure of traffic data can be understood as all measures adopted to ensure that expeditious preservation of traffic data is available regardless of whether one or more service providers were involved in the transmission of that communication, as well as measures to ensure the expeditious disclosure to the Party's competent authority, or a person designated by that authority, of a sufficient amount of traffic data to enable the Party to identify the service providers and the path through which the communication was transmitted.

169. Production order can be understood as all measures permitting competent authorities to order a person in its territory to submit specified computer data in that person's possession or control, which is stored in a computer system or a computer-data storage medium, as well as to order a service provider offering its services in the territory of the Party to submit subscriber information relating to such services in that service provider's possession or control.

170. Search and seizure of stored computer data can be understood as all measures permitting competent authorities to search or similarly access a computer system or part of it and computer data stored therein, as well as a computer-data storage medium in which computer data may be stored in its territory.

171. This term may also include measures guaranteeing that where the authorities search or similarly access a specific computer system or part of it, and have grounds to believe that the data sought is stored in another computer system or part of it in its territory, and such data is lawfully accessible from or available to the initial system, the authorities will be able to expeditiously extend the search or similar access to the other system.

172. Moreover, this term may involve all measures adopted to empower the competent authorities to seize or similarly secure computer data (accessed along with measures described above), and including the power to:

- a. seize or similarly secure a computer system or part of it or a computer-data storage medium;
- b. make and retain a copy of those computer data;
- c. maintain the integrity of the relevant stored computer data;
- d. render inaccessible or remove those computer data in the accessed computer system.

173. Lastly, the term may also encompass all measures necessary to empower the competent authorities to order any person who has knowledge about the functioning of the computer system or measures applied to protect the computer data therein to provide, as is reasonable, the necessary information to enable the undertaking of the measures referred to above.

174. Real-time collection of traffic data may be understood as all measures authorising the competent authorities to:

- a. collect or record through the application of technical means on the territory of that Party, and
- b. compel a service provider, within its existing technical capability:

i. to collect or record through the application of technical means on the territory of that Party; or

ii. to co-operate and assist the competent authorities in the collection or recording of traffic data, in real-time, associated with specified communications in its territory transmitted by means of a computer system.

175. This term may also involve, where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to above in a), measures adopted to ensure the real-time collection or recording of traffic data associated with specified communications transmitted in its territory, through the application of technical means on that territory.

176. It may also include measures permitting to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.

177. Interception of content data may be understood as all measures empowering the competent authorities, in relation to a range of serious offences to be determined by domestic law, to:

a. collect or record through the application of technical means on the territory of that Party, and

b. compel a service provider, within its existing technical capability:

i. to collect or record through the application of technical means on the territory of that Party, or

ii. to co-operate and assist the competent authorities in the collection or recording of content data, in real-time, of specified communications in its territory transmitted by means of a computer system.

178. In addition, this term may include, where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to above in a), measures adopted to ensure the real-time collection or recording of content data on specified communications in its territory through the application of technical means on that territory.

179. Finally, this term may also involve measures permitting a Party to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.

Article 21 – Protection measures

180. This Article proposes that Parties ensure, in the course of proceedings, the protection of persons holding information regarding possible offences referred to in this convention as well as witnesses. These general measures of protection apply at all stages of the proceedings, both during the investigation phase (whether they are carried out by a police service or a judicial authority) and during the court proceedings.

181. These protective measures are necessary, especially when it comes to protecting persons approached by or being under pressure from criminal organisations. Indeed, many cases of manipulation can involve threats, coercion or blackmail towards competition stakeholders or their support personnel.

182. Different categories of persons may be witnesses or sources of information in the fight against manipulation of sports competitions. However, their depositions, testimonies or exchange of information present real risks and therefore their safety may be at stake. Providing them with effective protection also aims at increasing their willingness to testify.

183. The question of protection for witnesses and persons collaborating with the judicial authorities was comprehensively dealt with by the Council of Europe in Recommendation No. R (97) 13 of the Committee of Ministers to member States concerning intimidation of witnesses and the rights of the defence, adopted on 10 September 1997. The recommendation establishes a set of principles as guidance for national law on witness intimidation, whether the code of criminal procedure or out-of-court protection measures. The recommendation offers member States a list of measures which could help protect the interests both of witnesses and of the criminal justice system effectively, while guaranteeing the defence appropriate opportunities to exercise its rights in criminal proceedings.

184. During the drafting process, and in light of, in particular, Recommendation No. R(97)13, it was considered that the phrase “persons who provide, in good faith and on reasonable grounds, information concerning offences referred to in Articles 15 to 17 of this convention or otherwise co-operate with the investigating or prosecuting authorities” refers to any person who faced criminal charges or had been convicted of offences referred to in Articles 15 to 17 of this convention and who agreed to co-operate with criminal justice authorities, in particular by giving information about offences in which they had taken part so that the offences could be investigated and prosecutions brought.

185. The word “witness” refers to any person who possesses information relevant to criminal proceedings concerning offences referred to in Articles 15 to 17 of the convention and it includes whistle blowers and informers.

186. Intimidation of witnesses, whether direct or indirect, may take different forms, but its purpose is nearly always to destroy and discredit evidence against defendants so that they have to be acquitted.

187. The beneficiaries of protection measures referred to in Article 21 are illustrative. However, the expression “effective protection”, used in this article refers to the need to adapt the level of protection to the threats to collaborators with the judicial authorities, witnesses, informers and, when necessary, family members of such persons. The measures required have to be identified depending on the assessment of the risk such persons may run. In some cases, it will be sufficient to install preventive technical equipment, establish an alert procedure, record incoming and outgoing telephone calls or provide a confidential telephone number, a protected car registration number or a mobile phone for emergency calls. In other cases, the person under protection may need bodyguards or, in extreme circumstances, further-reaching witness-protection measures such as a change of identity, employment and place of residence may be necessary.

188. If protection measures are to be effective, action should be taken to prevent offenders being aware of them. Parties therefore have to make sure that any information about the protection measures is safe from unauthorised access.

189. Protection measures should be granted only with the consent of the persons concerned.

CHAPTER VI – SANCTIONS AND MEASURES

190. Combating the phenomenon of manipulation of sports competitions requires not only the development of preventive measures, but also the setting-up of an efficient system of sanctions.

191. Based on legal principles and the domestic law of the Parties, the liability for manipulation of sports competitions can be criminal, civil or administrative. Such a liability also includes disciplinary sanctions imposed by sports organisations.

Article 22 – Criminal sanctions against natural persons

192. According to Article 22, the Parties undertake to establish necessary measures to ensure that the sanctions for offences referred to in Articles 15 to 17, in particular monetary sanctions, are effective, proportionate and dissuasive. As far as offences committed by natural persons are concerned, penalties involving deprivation of liberty may give rise to extradition, in accordance with each Party's domestic law.

193. The reference to sanctions involving deprivation of liberty which can give rise to extradition indicates that, in some cases, the manipulation of sports competitions can constitute a serious offence, subject to national criminal law.

Article 23 – Sanctions against legal persons

194. Legal persons should also be subject to effective, proportionate and dissuasive sanctions, which include monetary sanctions, as well as, where appropriate, other measures such as temporary or permanent disqualification from exercising commercial activity, placement under judicial supervision or a judicial winding-up order.

195. This article offers some flexibility as to the nature of the sanctions applied to legal persons, in order to take into account the diversity of sanctions available under domestic law. In particular, it does not entail any obligation to apply sanctions of a criminal nature.

Article 24 – Administrative sanctions

196. According to their domestic legislation, Parties shall adopt necessary measures, where appropriate, to punish infringements referred to in the convention by effective, proportionate and dissuasive sanctions following proceedings brought by the administrative authorities, where the decision may give rise to proceedings before a competent court. According to paragraph 2, the application of administrative measures may be entrusted to the regulatory authority or other responsible authority or authorities, in accordance with its domestic law. Such measures may include licence withdrawal for a sanctioned operator or website access being blocked.

Article 25 – Seizure and confiscation

197. Seizure and confiscation of assets derived from criminal activity or used by criminal organisations is an efficient means to fight against organised crime. Article 25 requires Parties to allow goods, documents and materials that are used to commit offences referred to in Articles 15 to 17 of this convention, to be seized and confiscated, as well as the proceeds of such offences.

198. The term "seizure" (or "freezing"), as defined in the UN Convention against Transnational Organized Crime, means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority.

199. As regards the definition of "confiscation", it includes, where applicable and within the meaning of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the "forfeiture" and means the permanent deprivation of property by order of a court or other competent authority.

200. The term "proceeds" is used within the meaning of the Council of Europe Convention 141, which follows the wording of the UN Convention against Transnational Organized Crime. Consequently, the definition of "proceeds" should be as broad as possible and may include, where appropriate, objects of offences. The wording of the definition does not rule out the inclusion of property and assets that may have been transferred to third

parties and includes any economic advantage derived from or obtained, directly or indirectly, from criminal offences.

201. It is noted that the implementation of the provision relating to confiscation may include specific protective measures in respect of persons who are not offenders of, or accessories to, the offence and whose assets were used to commit the offence without their knowledge.

CHAPTER VII – INTERNATIONAL CO-OPERATION IN JUDICIAL AND OTHER MATTERS

Article 26 – Measures with a view to international co-operation in criminal matters

202. As regards judicial co-operation in criminal matters, the Council of Europe already has an important normative framework. Thus, Convention 24, Convention 30, their Additional Protocols (1975, ETS No. 86; 1978, ETS No. 98; 1978, ETS No. 99; 2001, ETS No. 182, 2010, CETS No. 209) and Convention 141, which are cross-cutting instruments applicable to a large number of offences, can also be implemented to grant judicial co-operation in criminal matters in the course of proceedings in respect of offences referred to in Articles 15 to 17 of the convention.

203. For this reason, during the drafting process it was decided not to reproduce provisions similar to those found in cross-cutting instruments such as those mentioned above in the convention. Therefore, they did not want to create a separate mutual assistance regime which would replace other applicable instruments or agreements, considering that it would be more efficient to rely generally on regimes established by the existing treaties on mutual assistance and extradition. Consequently, only provisions with added value compared to existing conventions have been included in this chapter.

204. In addition, the Parties may provide for co-operation on the basis of existing international instruments, in particular the aforementioned conventions of the Council of Europe, and – for EU member States – the instruments adopted within the framework of the European Union, particularly the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between member States. The Parties can also provide for co-operation under arrangements agreed on the basis of uniform or reciprocal legislation.

205. Investigations and prosecutions in cases of manipulation of sports competitions may require the co-operation of several states. The transnational character of these manipulations is reflected in the cross-border nature of criminal networks, in registering suspicious bets with sports betting operators established in different jurisdictions, and in manipulation of international sports competitions or national competitions in several countries at the same time.

206. Article 26 therefore calls for co-operation between the Parties, in accordance with international law, for the purposes of investigation, prosecution and judicial proceedings regarding the offences referred to in Articles 15 to 17 of this convention, including the seizure and confiscation (paragraph 1). This co-operation also applies to extradition and mutual legal assistance (paragraph 2).

207. Article 26 further stipulates that as regards international co-operation, where dual criminality is considered to be a requirement, it shall be presumed, even if the laws of the Party requested place the offence within a different category or use different terminology to the offence than the requesting Party, provided that the conduct at the origin of the offence in respect of which a request for mutual assistance or extradition was made, constitutes an offence under the laws of both Parties (paragraph 3).

208. Similarly, if a Party that makes extradition or mutual assistance in criminal matters conditional on the existence of a treaty, receives such a request from another Party with which it has not concluded such a treaty, it may, acting in full compliance with its obligations under international law and subject to the conditions provided for by its own domestic law,

consider this convention to be the legal basis for extradition or mutual legal assistance in criminal matters in respect of the offences referred to in Articles 15 to 17 of this convention.

Article 27 – Other measures with a view to international co-operation in respect of prevention

209. The Parties should endeavour to integrate, where appropriate, the prevention of and the fight against manipulation of sports competitions in development of assistance programmes for the benefit of third States.

Article 28 – International co-operation with international sports organisations

210. Under Article 28, the Parties shall develop co-operation with international sports organisations in the fight against the manipulation of sports competitions, in accordance with their domestic law.

211. This co-operation may concern the different aspects of the convention: prevention, awareness-raising of stakeholders, detection or exchange of information

CHAPTER VIII – FOLLOW UP

212. Chapter VIII of the convention contains provisions aiming to ensure the effective implementation of the convention by the Parties. During the drafting process, the existence of a credible and legitimate monitoring mechanism was considered to be essential. This monitoring is based primarily on the Convention Follow-up Committee, a body composed of representatives of the Parties to the convention, and responsible for follow-up duties relating to the convention.

Article 29 - Provision of information

213. The purpose of this article is not primarily to check the effectiveness of the convention but, through the offices of the Secretary General, to exchange information and experiences between Parties and observers. The Convention Follow-up Committee may specify the type of information, frequency and methods of gathering information.

Article 30 – Convention Follow-up Committee

214. Under Article 30, each Party shall appoint a representative or representatives to the Committee, and will be free to appoint representatives of public authorities responsible for the sport, betting regulation and/or law enforcement (police, justice). Each Party shall have one vote.

215. Like other monitoring mechanisms (e.g. the Committee of the Parties responsible for the implementation of the Convention of the Council of Europe on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health (2011, CETS No. 211), Article 30, paragraph 3 provides that the Convention Follow-up Committee may invite, by unanimous decision, any State which is not a Party to the convention, any international organisation or body to be represented at its meetings as an observer. This is an important feature of the Committee. It may thus benefit, where appropriate, from additional expertise and experience of organisations already involved in the fight against manipulation of sports competitions or other relevant activities. Accordingly, the Convention Follow-up Committee may consider the involvement of bodies such as GRECO or the European Committee on Crime Problems (CDPC), which could bring positive support to the monitoring of this convention.

216. The Convention Follow-up Committee will hold its first meeting at the request of the Secretary General of the Council of Europe, within one year from the entry into force of the convention. Subsequently, it will meet at the request of at least one third of the Parties or the Secretary General.

217. The Committee will draw up and adopt its own Rules of Procedure (by consensus). It will be assisted by the Secretariat of the Council of Europe in carrying out its functions.

Article 31 – Functions of the Convention Follow-up Committee

218. In the context of the convention's monitoring framework, the Convention Follow-up Committee is responsible for the follow-up of its implementation and thus carries out several functions, specified in Article 31.

219. The Convention Follow-up Committee shall adopt and amend the list of sports organisations referred to in Article 3.2, while ensuring that it is published in an appropriate manner. The definitions of sports competitions (Article 3.1) and sports organisations (Article 3.2) refer to this list, whose adoption and publication are essential for the implementation of the convention. The list of sports organisations will mainly be published on the EPAS website.

220. The Committee may also address recommendations to the Parties, in particular with respect to international co-operation. Where appropriate, these recommendations will be prepared in co-ordination with other relevant bodies of the Council of Europe which prepare recommendations on these issues (e.g. GRECO).

221. Following prior consultations with representatives of sports organisations and sports betting operators, the Convention Follow-up Committee may, where appropriate, make recommendations to the Parties on the conditions to be met by sports organisations and sports betting operators to benefit from the exchange of information referred to in Article 12.1 of the convention, as well as on other ways aimed at enhancing the operational co-operation between the relevant public authorities, sports organisations and betting operators, as mentioned in this convention. These may include for instance, criteria relating to the restriction of the supply of sports betting mentioned in Article 9.1.b of the convention, the definition of irregular sports betting (for example, inconsistent with usual or anticipated patterns of the specific market) or the definition of suspicious sports betting (for example, reliable and consistent evidence).

222. The Committee may also keep relevant international organisations and the public informed about the activities undertaken within the framework of this convention and it will prepare opinions to the Committee of Ministers on applications from non-member States of the Council of Europe asking to be invited by the Committee of Ministers to sign the convention.

223. The Committee may hold meetings of experts in order to carry out its functions. The Convention Follow-up Committee shall arrange visits to the Parties, subject to the prior approval of the Parties concerned.

224. It is intended here to use the "peer review" mechanism, which is an examination by other States of one State's performance or practices in a particular area, for instance through visits or hearings. The point of the exercise is to help the State under review improve its policymaking, adopt best practices and comply with established standards and principles (OECD definition).

CHAPTER IX – FINAL PROVISIONS

225. With some exceptions, Articles 32 to 41 are essentially based on the Model Final Clauses for Conventions and Agreements concluded within the Council of Europe, which the Committee of Ministers approved at the Deputies' 315th meeting, in February 1980.

Article 32 – Signature and entry into force

226. The convention is open for signature by Council of Europe member States, other States Party to the European Cultural Convention, the European Union, and states not members of the Council of Europe which took part in drawing it up ⁽¹⁾ or enjoying observer status with the Council of Europe.

227. Given the truly transnational character of the risk of manipulation of sports competitions and the necessity of combating this threat beyond European borders, this provision allows the convention to be applied on a wider scale.

228. The convention will enter into force on the first day of the month following the expiration of a period of three months after the date on which five Signatories, including at least three member States of the Council of Europe, have expressed their consent to be bound by the convention. The number of ratifications, acceptances or approvals required for the entry into force of the convention is not very high in order not to delay unnecessarily the entry into force of the convention, but reflects nevertheless the belief that a minimum number of Parties is needed to successfully set about addressing the major challenge of combating manipulation of sports competitions.

229. The article permits any other non-member State of the Council of Europe, which has not participated in the elaboration of the convention, to sign it. The decision to invite such a non-member State to sign the convention is taken by the Committee of Ministers by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers, after consulting the Convention Follow-up Committee, once established.

Article 33 – Effects of the convention and relationship with other international instruments

230. In accordance with the 1969 Vienna Convention on the Law of Treaties, Article 33 seeks to ensure that the convention harmoniously coexists with other treaties dealing with matters covered also by this convention. In particular, the convention supplements the provisions of Convention 24, Convention 30, Convention 141 and Convention 198.

231. The Parties may conclude other bilateral or multilateral agreements in order to supplement or strengthen the application of this convention. When Parties establish such other instruments, they will do so in a manner that is not inconsistent with the convention's objectives and principles.

232. In particular, this convention does not alter their rights and obligations arising from other agreements previously concluded on the fight against doping and consistent with the subject and purpose of this convention.

(1) Australia, Belarus, Canada, Israel, Japan, Morocco, New Zealand.

Article 34 – Conditions and safeguards

233. Article 34 ensures, in particular, that the measures taken within the framework of this convention will be subject to the conditions and safeguards provided for under domestic law and international law, in particular Convention 5 and the United Nations' International Covenant on Civil and Political Rights (1966), and other applicable international human rights instruments, and whereby these conditions and safeguards shall incorporate the principle of proportionality.

234. Such conditions and safeguards shall, as appropriate in view of the nature of the procedure or power concerned, inter alia include judicial or other independent supervision, grounds justifying application, and limitation of the scope and the duration of such power or procedure.

Article 35 – Territorial application

235. Article 35 is dedicated to the territorial application of this convention. Any contracting State or the European Union may specify the territory or territories to which this convention shall apply. It can also choose to extend the application of this convention to any other territory specified in a declaration addressed to the Secretary General of the Council of Europe, and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

236. It is well understood, however, that it would be contrary to the object and purpose of this convention for any contracting Party to exclude parts of its main territory from the convention's scope and that it was unnecessary to make this point explicit in the convention. This provision is only concerned with territories having a special status, such as overseas territories.

Article 36 – Federal clause

237. The convention contains a federal clause, whereby a federal State may reserve the right to apply the provisions of Chapters II, IV, V and VI consistent with its fundamental principles governing the relationship between its central government and constituent States or other similar territorial entities provided that it is still able to assume its obligations to co-operate under Chapters III and VII. This provision shall not undermine the effective application of the present convention. In addition, it is the responsibility of Parties to inform its constituent States of these provisions and to encourage them to take appropriate action to give them effect.

Article 37 – Reservations

238. Article 37 specifies that the Parties may make use of the reservations provided for in Article 19, paragraph 2 and in Article 36, paragraph 2, only when they give their assent to the convention. They then may withdraw such reservations as soon as possible, and they can receive requests from the Secretary General of the Council of Europe about the prospects of withdrawal of such reservation(s).

Article 38 – Amendments

239. According to Article 38, amendments to articles of this convention may be proposed by the Parties, the Convention Follow-up Committee or the Committee of Ministers of the Council of Europe. These amendments shall then be communicated to all member States of the Council of Europe, signatories, Parties, non-member States having participated in the elaboration of this convention, or enjoying observer status with the Council of Europe, the European Union, as well as any State having been invited to sign this convention. The Convention Follow-up Committee shall submit to the Committee of Ministers its opinion on the proposed amendment.

240. The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Follow-up Committee, and may possibly adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe.

Article 39 – Settlement of disputes

241. Article 39 provides that in the event of a dispute between Parties as to the application of this convention, they shall seek a settlement through peaceful means, and that the Committee of Ministers of the Council of Europe may establish settlement procedures, the application thereof being subject to the consent of the Parties to the dispute.

242. Article 39 also requires that the Convention Follow-up Committee, as well as the other relevant bodies of the Council of Europe shall be informed of any difficulties regarding the interpretation and application of this convention.

Article 40 – Denunciation

243. In accordance with the Vienna Convention on the Law of Treaties (1969), Article 40 provides for the possibility for any Party to denounce the convention.

Article 41 – Notification

244. Article 41 lists the notifications that, as the depositary of the convention, the Secretary General of the Council of Europe is required to make, and designates the recipients of these notifications (States and the European Union).