APPENDIX I

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 7 December 2012
[CDPC plenary/2012 plenary_2/oj lp/cdpc list of participants] CDPC (2012) LP 2 fin (Bil)

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

COMITE EUROPEEN POUR LES PROBLEMES CRIMINELS (CDPC)

63rd Plenary Session / 63ème Session plénière

Strasbourg, 4 – 7 December / 4 – 7 décembre 2012

Agora Building / Bâtiment Agora

Room / Salle G02

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APPENDIX II

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 30 November 2012 CDPC (2012) OJ 2
CDPC/CDPC 2012plenary_2/OJ+LP/cdpc (2012) OJ2 – E

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

63rd Plenary Session

Strasbourg, 4 (9.30 am) – 7 December 2012 (1.00 pm)

DRAFT AGENDA

Council of Europe

Agora Building
Room G 02

1. Opening of the meeting

2. Adoption of the draft agenda

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Resolution on intergovernmental committees and subordinate bodies, their terms of reference and working methods	CM Res (2011) 24

13. Trafficking in organs

Preliminary draft Council of Europe Convention against Trafficking in Human Organs	PC-TO (2012) 1 rev 4
Explanatory Report	PC-TO (2012) 13 rev 1
Explanatory Report with comments by PC-TO members	PC-TO (2012) 13 rev 2
Questionnaire	CDPC (2012) 14
Replies to the questionnaire	CDPC (2012) 18
Reply by Italy	reply
Reply by Poland	reply
Reply by the Russian Federation	reply

4. Follow-up to the 31st Council of Europe Conference of Ministers of Justice (Vienna, 19-21 September 2012) : "Responses of Justice to urban violence"

Resolution on responses of justice to urban violence	MJU-31 (2012) RESOL. E
For information: SG Report on previous conference	MJU-31 (2012) 02
Website of the Conference	Website
Decision of the Committee of Ministers (taken on 28 November 2012)	Decision
SG report on Vienna	CM (2012) 145

5. Dangerous offenders

Terms of reference of the Ad hoc Drafting Group on Dangerous Offenders (PC-GR-DD)	Terms of reference

***6. Council for Penological Co-operation (PC-CP)**

Report of the 2nd Meeting of the PC-CP Working Group, Paris, 15-17 October 2012	PC-CP (2012) 16

a. The 17th Council of Europe Conference of Directors of Prison Administration (CDAP)

Programme	Programme
Conclusions of the CDAP	Conclusions
Conclusions of the meeting on prison overcrowding	Conclusions

* Items marked with an asterisk indicate that discussions on this agenda item are likely to last or exceed 2 hours.

b.	**Electronic monitoring** Scope and definitions	PC-CP (2012) 7 rev 2
***7.**	**Promotion of the Integrity of Sport against the Manipulation of Results, notably match-fixing** Decision of the Committee of Ministers	CM decision
a.	**Possible Council of Europe Convention against Manipulation of Sports Results and notably Match-fixing** Preliminary draft Convention against manipulation of sports results Framework and timetable for the process of negotiating a draft international convention to combat the manipulation of sports results Feasibility study on criminal law on Promotion of the integrity of sport against manipulation of results, notably match-fixing (Please note the document is 102 pages long) Letter of the Chair of the CDPC Letter of the Chair of the Governing Board of EPAS	EPAS (2012) 27rev EPAS (2012) 23rev1 CDPC (2012) 1 letter letter
b.	**Feasibility of an Additional Protocol to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173)** Questionnaire Replies to the questionnaire Addendum	Questionnaire CDPC (2012) 19 Bil Addendum
8.	**Committee of Experts on the operation of European conventions on co-operation in criminal matters (PC-OC)** List of decisions of the 14th meeting of the PC-OC Mod Draft agenda of the 63rd Plenary meeting of the PC-OC List of decisions of the 63rd Plenary meeting of the PC-OC Practical guidelines on jurisdiction and transfer of proceedings	PC-OC Mod (2012) 04 PC-OC (2012) OJ 2 rev. PC-OC (2012) 13 PC-OC Mod (2012) 01 rev 4
9.	**Activities related to transnational organised crime** Terms of reference of the Ad hoc Drafting Group on Transnational Organised Crime (PC-GR-COT)	Terms of reference
10.	**Follow-up to the decision adopted by the Plenary on activities related to piracy** Background working paper Appendices (Please note the document is 108 pages long) Questionnaire Replies to the questionnaire (Please note the document is 73 pages long)	CDPC (2012) 11 Appendices CDPC (2012) 15 CDPC (2012) 16 Bil
11.	**Alternative measures to imprisonment** Existing Council of Europe instruments and activities pertaining to quasi-compulsory measures (PCM)	CDPC (2012) 13
12.	**Information provided by the Secretariat**	
a.	**Medicrime** Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health	Chart of signatures and ratifications
b.	**Review of Council of Europe Conventions** Report by the Secretary General (Please note the document is 64 pages	SG/Inf(2012)12

long)

SG/Inf(2012)12 Addendum

13. Any other business

14. Date of the next meeting

APPENDIX III

Strasbourg, 19 October 2012 PC-TO (2012) 1- rev 4

RESTRICTED

Committee of Experts on Trafficking in Human Organs, Tissues and Cells (PC-TO)

Preliminary draft Council of Europe Convention against Trafficking in Human Organs

Document prepared by the Secretariat of
the Directorate General Human Rights and Rule of Law (DG1)

Preamble

The member States of the Council of Europe and the other signatories hereto:

Bearing in mind the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly on 10 December 1948, and the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, CETS No. 5);

Bearing in mind the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (CETS No. 164, 1997) and the Additional Protocol to the Convention on Human Rights and Medicine concerning Transplantation of Organs and Tissues of Human Origin (2002, CETS No. 186);

Bearing in mind the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (2000)" and the Council of Europe Convention on Action against Trafficking in Human Beings (2005, CETS No. 197);

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that the trafficking in human organs violates human dignity and the right to life and constitutes a grave threat to public health;

Determined to contribute in a significant manner to the eradication of the trafficking in human organs through the introduction of new offences supplementing the existing international legal instruments in the field of trafficking in human beings for the purpose of the removal of organs;

Considering that the purpose of this Convention is to prevent and combat trafficking in human organs, giving effect to the provisions of the Convention concerning substantive criminal law should be carried out taking into account its purpose and the principle of proportionality;

Recognising that, to efficiently combat the global threat posed by the trafficking in human organs, close international co-operation between Council of Europe member States and non-member States alike should be encouraged,

Have agreed as follows:

Chapter I – Purpose [use of terms]

Article 1 – Purpose

1 The purposes of this Convention are:

a. to prevent and combat the trafficking in human organs by providing for the criminalisation of certain acts;
b. to protect the rights of victims of the offences established under this Convention;

c. to facilitate co-operation at national and international levels on action against the trafficking in human organs.

2 In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific follow-up mechanism.

Article 2 – Scope and use of terms

1 This Convention applies to the illicit removal and trafficking in human organs for purposes of transplantation or other purposes.

2 For the purposes of this Convention, the term

[- "trafficking in human organs" shall mean any illicit activity in respect of human organs as prescribed in Articles .... (Article 4, paragraph 1, Article 5 and Articles 7 to 9) of this Convention;][2]

- "human organ" shall mean a differentiated part of the human body, formed by different tissues, that maintains its structure, vascularisation, and capacity to develop physiological functions with a significant level of autonomy. A part of an organ is also considered to be an organ if its function is to be used for the same purpose as the entire organ in the human body, maintaining the requirements of structure and vascularisation.

Article 3 – Principle of non-discrimination

The implementation of the provisions of this Convention by the Parties, in particular the enjoyment of measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, age, religion, political or any other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, state of health, disability or other status.

Chapter II – Substantive Criminal Law

Article 4 – Illicit removal of human organs for transplantation or other purposes

1 Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the removal of human organs from living or deceased donors:

a. [where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law;][3]

[2] The Committee could not reach agreement on the wording of this definition. A number of delegations expressed their support for the above text proposed by the Chair, some requiring a more extensive list of articles (Russian Federation, Slovakia and Holy See). Others supported the deletion of this definition.(Germany, Sweden).

[3] The PC-TO could not agree on the present draft wording; the issue will be presented to the CDPC for decision

b. where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage;
c. where in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage.

2 The expression "financial gain or comparable advantage" shall, for the purpose of paragraph 1, b and c, not include compensation for loss of earnings and any other justifiable expenses caused by the removal or by the related medical examinations, or compensation in case of damage which is not inherent to the removal of organs.

3 Each Party shall consider[4] taking the necessary legislative or other measures to establish as a criminal offence under its domestic law the removal of human organs from living or deceased donors where the removal is performed outside of the framework of its domestic transplantation system, or where the removal is performed in breach of essential principles of national transplantation laws or rules.

Article 5 – Use of illicitly removed organs for purposes of implantation or other purposes than implantation

Each Party shall take the necessary legislative and other measures to establish as a criminal[5] offence under its domestic law, when committed intentionally, the use of illicitly removed organs, as described in Article 4, paragraph 1, for purposes of implantation or other purposes than implantation.

Article 6 – Implantation of organs outside of the domestic transplantation system or in breach of essential principles of national transplantation law

Each Party shall consider[6] taking the necessary legislative or other measures to establish as a criminal offence under its domestic law, when committed intentionally, the implantation of human organs from living or deceased donors where the implantation is performed outside of the framework of its domestic transplantation system, or where the implantation is performed in breach of essential principles of national transplantation laws or rules.

Article 7 – Illicit solicitation, recruitment, offering and requesting of undue advantages

1 Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the solicitation and recruitment of an organ donor or a recipient, where carried out for financial gain or comparable advantage for the person soliciting or recruiting or for a third party.

[4] The Russian delegation wants obligation of criminalisation and an option of reservation

[5] The German delegation insists on the deletion the word 'criminal'.

[6] Russian delegation wants obligation of criminalisation and an option of reservation.

2 Each Party shall take the necessary legislative and other measures to establish as a criminal offence[7], when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to healthcare professionals, its public officials or persons who, in any capacity, direct or work for private sector entities, with a view to having a removal or implantation of a human organ performed or facilitated, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1 or Article 5 and where appropriate Article 4, paragraph 3 or Article 6[8].

3 Each Party shall take the necessary legislative and other measures to establish as a criminal offence[9], when committed intentionally, the request or receipt by healthcare professionals, its public officials or persons who, in any capacity, direct or work for private sector entities, of any undue advantage with a view to performing or facilitating the performance of a removal or implantation of a human organ, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1 or Article 5 and where appropriate Article 4, paragraph 3 or Article 6.

Article 8 – Preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs

Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally:

a. the preparation, preservation, and storage of illicitly removed human organs as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 3 of this Convention;
b. the transportation, transfer, receipt, import and export of illicitly removed human organs as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 3 of this Convention;

Article 9 – Aiding or abetting and attempt

1 Each Party shall take the necessary legislative and other measures to establish as criminal offences when committed intentionally, aiding or abetting the commission of any of the criminal offences established in accordance with this Convention.

2 Each Party shall take the necessary legislative and other measures to establish as a criminal offence the intentional attempt to commit any of the criminal offences established in accordance with this Convention.

[7] German proposal for alternative text PC-TO (2012) 19 not supported by group. German delegation insists on proposed wording.

[8] When reviewing the draft Explanatory Report, a discussion on the interpretation of this phrase (used also in par 3 and in Art. 8) arose which will be presented to the CDPC for further discussion

[9] German proposal for alternative text PC-TO (2012) 19 not supported by group. German delegation insists on proposed wording.

3 Each state or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply, or to apply only in specific cases or conditions, [paragraphs 1 and 2 to offences established in accordance with Article 7, Article 8][10]

Article 10 – Corporate liability

1 Each Party shall take the necessary legislative and other measures to ensure that legal persons can be held liable for offences established in accordance with this Convention, when committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it based on:

a. a power of representation of the legal person;
b. an authority to take decisions on behalf of the legal person;
c. an authority to exercise control within the legal person.

2 Apart from the cases provided for in paragraph 1, each Party shall take the necessary legislative and other measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of an offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.

4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

Article 11 – Sanctions and measures

1 [Each Party shall take the necessary legislative and other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for offences established in accordance with Articles 4, paragraph 1, Article 5 and Articles 7 to 9, when committed by natural persons, penalties involving deprivation of liberty that may give rise to extradition.] [11]

2 Each Party shall take the necessary legislative and other measures to ensure that legal persons held liable in accordance with Article 10 are subject to effective, proportionate and dissuasive sanctions, including criminal or non-criminal monetary sanctions, and may include other measures, such as:

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[10] CDPC Delegations will be invited to submit in writing proposals for articles to be referred to in this paragraph. Alternatively, it could be considered to exempt certain Articles from par 1 and/or 2 with no further reservation possibilities in par 3-.

[10] CDPC Delegations will be invited to submit in writing proposals for this paragraph and the articles to be referred to.

a. temporary or permanent disqualification from exercising commercial activity;
b. placing under judicial supervision;
c. a judicial winding-up order.

3 Each Party shall take the necessary legislative and other measures to:

a. permit seizure and confiscation of proceeds of the [criminal][12] offences established in accordance with this Convention[13], or property whose value corresponds to such proceeds;
b. enable the temporary or permanent closure of any establishment used to carry out any of the [criminal][14] offences established in accordance with this Convention, without prejudice to the rights of *bona fide* third parties, [and/or][15] to deny the perpetrator, temporarily or permanently, in conformity with the relevant provisions of domestic law, the exercise of a professional activity relevant to the commission of any of the offences established in accordance with this Convention.

Article 12 – Aggravating circumstances

Each Party shall take the necessary legislative and other measures to ensure that the following circumstances, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of domestic law, be taken into consideration as aggravating circumstances in determining the sanctions in relation to the offences established in accordance with this Convention:

a. the offence caused the death of, or serious damage to the physical or mental health of, the victim;
b. the offence was committed by persons abusing their position;
c. the offence was committed in the framework of a criminal organisation;
d. the perpetrator has previously been convicted of offences established in accordance with this Convention;
e. the offence was committed against a child or any other particularly vulnerable person.

Article 13 – Previous convictions

[12] The Russian Federation and Romania were against inserting the term 'criminal'. Austria, Finland, France and Sweden asked for consistency in use of 'offence' or 'criminal offence' in Articles 9-22. Germany, Romania and Spain wish to use 'criminal' in Articles 9-22.

[13] The question of interpretation of this phrase (used here as well as in other provisions of Art. 9-22) in respect of its application in case of Art. 4(3) and Art 6 will be presented to the CDPC for further discussion and decision.

[14] C.f. note on subpar a. .

[15] Some delegations (Belgium, France, Italy, Norway, Russian Federation, Spain, Ukraine) were in favour of using 'and' while others (Austria, Finland, Germany, Sweden) would like to use 'or'. The matter will be presented to the CDPC for further discussion and decision

Each Party shall take the necessary legislative and other measures to provide for the possibility to take into account final sentences passed by another Party in relation to the offences established in accordance with this Convention when determining the sanctions.

Chapter III – Criminal Procedural Law

Article 14 – Jurisdiction[16]

1 Each Party shall take such legislative or other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:

a. in its territory; or
b. on board a ship flying the flag of that Party; or
c. on board an aircraft registered under the laws of that Party; or
d. by one of its nationals; or
e. by a person who has his or her habitual residence in its territory.

2 Each Party shall take[17] the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention where the offence is committed against one of its nationals or a person who has his or her habitual residence in its territory.

3 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraph 1. d and e and paragraph 2 of this article.

4 For the prosecution of the offences established in accordance with this Convention, each Party shall take the necessary legislative or other measures to ensure that its jurisdiction as regards paragraphs 1.d and e is not subordinated to the condition that the prosecution can only be initiated following a report from the victim or a denunciation from the State of the place where the offence was committed.

5 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases paragraph 4 of this article.[18]

6 Each Party shall take the necessary legislative or other measures to establish jurisdiction over the offences established in accordance with this Convention, in cases where an alleged

[16] Belgium and Russian Federation did not support the deletion of previous paragraphs 4 and 5.

[17] Certain delegations would like to use term ‘endeavour to take’: Germany, Finland, Ireland, Romania, Sweden, UK. In favour of ‘shall take’: Belgium, Italy, Moldova, Russian Federation, Slovakia, Ukraine and Holy See.

[18] The Russian Federation is not in agreement with this additional reservation possibility.

offender is present on its territory and it does not extradite him or her to another State, solely on the basis of his or her nationality[19].

7 When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

8 Without prejudice to the general rules of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its internal law.

Article 15 – Initiation and continuation of proceedings

Each Party shall take the necessary legislative and other measures to ensure that investigations or prosecution of offences established in accordance with this Convention should not be subordinate to a complaint and that the proceedings may continue even if the complaint is withdrawn.[20]

Article 16 – Criminal investigations

Each Party shall take the necessary legislative and other measures, in conformity with the principles of its domestic law, to ensure effective criminal investigation and prosecution of offences established in accordance with this Convention.

Article 17 – International co-operation in criminal matters[21]

1 The Parties shall co-operate with each other, in accordance with the provisions of this Convention and in pursuance of relevant applicable international and regional instruments and arrangements agreed on the basis of uniform or reciprocal legislation and their domestic law, to the widest extent possible, for the purpose of investigations or proceedings concerning the offences established in accordance with this Convention, including seizure and confiscation.

2 The Parties shall co-operate to the widest extent possible in pursuance of the relevant applicable international, regional and bilateral treaties on extradition and mutual legal assistance in criminal matters concerning the offences established in accordance with this Convention.

3 If a Party that makes extradition or mutual legal assistance in criminal matters conditional on the existence of a treaty receives a request for extradition or legal assistance in criminal matters from a Party with which it has no such a treaty, it may, acting in full compliance with its obligations under international law and subject to the conditions provided for by the law of

[19] The Russian delegation requested that the last part of this paragraph ('solely on the....') be deleted.

[20] Russia made a proposal for an additional paragraph 1 to Article 15. However the proposal was not supported by other delegations.

[21] The Russian delegation is not sure if the use of the term 'criminal matters' is appropriate.

the requested Party, consider this Convention as the legal basis for extradition or mutual legal assistance in respect of the offences established in accordance with this Convention.

Chapter IV – Protection measures

Article 18 – Protection of victims

Each Party shall take the necessary legislative and other measures to protect the rights and interests of victims of offences established in accordance with this Convention, in particular by:

a. ensuring that victims have access to information relevant to their case and which is necessary for the protection of their health and other rights involved;
b. assisting victims in their physical, psychological and social recovery;
c. providing, in its domestic law, for the right of victims to compensation from the perpetrators.[22]

Article 19 – Standing of victims in criminal proceedings

1 Each Party shall take the necessary legislative and other measures to protect the rights and interests of victims at all stages of criminal investigations and proceedings, in particular by:

a. informing them of their rights and the services at their disposal and, upon request, the follow-up given to their complaint, the charges, the state of the criminal proceedings unless in exceptional cases the proper handling of the case may be adversely affected by such notification, and their role therein as well as the outcome of their cases;[23]
b. enabling them, in a manner consistent with the procedural rules of domestic law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;
c. providing them with appropriate support services so that their rights and interests are duly presented and taken into account;
d. providing effective measures for their safety, as well as that of their families, from intimidation and retaliation. [24]

2 Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings.

3 Each Party shall ensure that victims have access to legal aid, in accordance with domestic law and provided free of charge where warranted, when it is possible for them to have the status of parties to criminal proceedings.

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[22] Ireland and UK wish for the word 'seek' to be added before 'compensation'.

[23] Russian delegation did not support the new wording of 1,a.

[24] Alternative proposal made by Austria, Germany, United Kingdom and Sweden for 'd' (PC-TO (2012) 20) ensuring that measures are available to protect victims and their family members from intimidation and retaliation', supported also by France and Ireland, was not acceptable to the Slovak Republic, Russian Federation and Ukraine; the CDPC may want to further reflect on this.

4 Each Party shall take the necessary legislative and other measures to ensure that victims of an offence established in accordance with this Convention committed in the territory of a Party other than the one where they reside can make a complaint before the competent authorities of their State of residence.

5 Each Party shall provide, by means of legislative or other measures, in accordance with the conditions provided for by its domestic law, the possibility for groups, foundations, associations or governmental or non-governmental organisations, to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with this Convention.

Article 20 – Protection of witnesses

1 Each Party shall, within its means and in accordance with the conditions provided for by its domestic law, provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings, who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2 Paragraph 1 of this article shall also apply to victims insofar as they are witnesses.

Chapter V – Prevention measures

Article 21 – Measures at domestic level

1. Each Party shall take the necessary legislative and other measures to ensure:

    i the existence of a transparent domestic system for the transplantation of human organs;
    ii equitable access to transplantation services for patients;
    iii adequate collection, analysis and exchange of information related to the offences covered by this Convention in co-operation between all relevant authorities.

2. With the aim of preventing and combatting trafficking in human organs, each Party shall take measures, as appropriate:

    i. to provide information or strengthen training for healthcare professionals and relevant officials in the prevention of and combat against trafficking in human organs;
    ii. to promote awareness-raising campaigns addressed to the general public about the unlawfulness and dangers of trafficking in human organs.

3. Each Party shall take the necessary legislative and other measures to prohibit the advertising of the need for, or availability of human organs, with a view to offering or seeking financial gain or comparable advantage.

Article 22 – Measures at international level

The Parties shall, to the widest extent possible, co-operate with each other in order to prevent trafficking in human organs. In particular, the Parties shall:

i report to the Committee of the Parties on its request on the number of cases of trafficking in human organs within their respective jurisdictions;

ii designate a national contact point for exchange of information pertaining to trafficking in human organs.

Chapter VI – Follow-up mechanism

Article 23 – Committee of the Parties

1 The Committee of the Parties shall be composed of representatives of the Parties to the Convention.

2 The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention for the tenth signatory having ratified it. It shall subsequently meet whenever at least one third of the Parties or the Secretary General so requests.

3 The Committee of the Parties shall adopt its own rules of procedure.

4 The Committee of the Parties shall be assisted by the Secretariat of the Council of Europe in carrying out its functions.

5 A contracting Party which is not a member of the Council of Europe shall contribute to the financing of the Committee of the Parties in a manner to be decided by the Committee of Ministers upon consultation of that Party.

Article 24 – Other representatives

1 The Parliamentary Assembly of the Council of Europe, the European Committee on Crime Problems (CDPC), as well as other relevant Council of Europe intergovernmental or scientific committees, shall each appoint a representative to the Committee of the Parties in order to contribute to a multisectoral and multidisciplinary approach.

2 The Committee of Ministers may invite other Council of Europe bodies to appoint a representative to the Committee of the Parties after consulting them.

3 Representatives of relevant international bodies may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.

4 Representatives of relevant official bodies of the Parties may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.

5 Representatives of civil society, and in particular non-governmental organisations, may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.

6 In the appointment of representatives under paragraphs 2 to 5, a balanced representation of the different sectors and disciplines shall be ensured.

7 Representatives appointed under paragraphs 1 to 5 above shall participate in meetings of the Committee of the Parties without the right to vote.

Article 25 – Functions of the Committee of the Parties

1 The Committee of the Parties shall monitor the implementation of this Convention. The rules of procedure of the Committee of the Parties shall determine the procedure for evaluating the implementation of this Convention, using a multisectoral and multidisciplinary approach.

2 The Committee of the Parties shall also facilitate the collection, analysis and exchange of information, experience and good practice between States to improve their capacity to prevent and combat trafficking in organs. The Committee may avail itself of the expertise of relevant Council of Europe committees and other bodies.

3 Furthermore, the Committee of the Parties shall, where appropriate:

a. facilitate the effective use and implementation of this Convention, including the identification of any problems and the effects of any declaration or reservation made under this Convention;
b. express an opinion on any question concerning the application of this Convention and facilitate the exchange of information on significant legal, policy or technological developments;
c. make specific recommendations to Parties concerning the implementation of this Convention.

4 The European Committee on Crime Problems (CDPC) shall be kept periodically informed regarding the activities mentioned in paragraphs 1, 2 and 3 of this article.

Chapter VII – Relationship with other international instruments

Article 26 – Relationship with other international instruments

1 This Convention shall not affect the rights and obligations arising from the provisions of other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention.

2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

Chapter VIII – Amendments to the Convention

Article 27 – Amendments

1 Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the Parties, the member States of the Council of Europe, non-member States having participated in the elaboration of this Convention or enjoying observer status with the Council of Europe, the European Union, and any State having been invited to sign this Convention.

2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC) and other relevant Council of Europe intergovernmental or scientific committees, which shall submit to the Committee of the Parties their opinions on that proposed amendment.

3 The Committee of Ministers of the Council of Europe shall consider the proposed amendment[25] and, after having consulted the Parties to this Convention that are not members of the Council of Europe, may adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5 Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Chapter IX – Final clauses

Article 28 – Signature and entry into force[26]

1 This Convention shall be open for signature by the member States of the Council of Europe, the European Union and the non-member States which have participated in its elaboration or enjoy observer status with the Council of Europe. It shall also be open for signature by any other non-member State of the Council of Europe upon invitation by the Committee of Ministers. The decision to invite a non-member State to sign the Convention shall be taken 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. This decision shall be taken after having obtained the unanimous agreement of the other States/European Union having expressed their consent to be bound by this Convention.

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[25] Treaty Office suggests to add the wording “and the opinion submitted by the Committee of the Parties” after the words “shall consider the proposed amendment”

[26] In an initial discussion, four delegations were in favor of Article 28, two delegations were in favor of instead using Article 28 bis and ter. The PC-TO decided to leave this matter to the CDPC

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall 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 in accordance with the provisions of the preceding paragraph.

4 In respect of any State or the European Union, which subsequently expresses its consent to be bound by the Convention, it shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

ALTERNATIVE TO ARTICLE 28:

[Article 28bis – Signature and entry into force

1 This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Union.

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 signatories, including at least eight member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2.

4 In respect of any State referred to in paragraph 1 or the European Union, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 28ter – Accession to the Convention

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken 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 Parties entitled to sit on the Committee of Ministers.

2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.]

Article 29 – Territorial application

1 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 30 – Reservations

No reservation may be made in respect of any provision of this Convention, with the exception of the reservations expressly established.

1 Each Party which has made a reservation may, at any time, withdraw it entirely or partially by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect from the date of the receipt of such notification by the Secretary General.

2 Each party may at the time of signature or when depositing its instrument of ratification, acceptance or approval, limit the scope of application to the illicit removal and trafficking in human organs for purposes of transplantation only.[27]

Article 31 – Dispute settlement

The Committee of the Parties will follow in close co-operation with the European Committee on Crime Problems (CDPC) and other relevant Council of Europe intergovernmental or scientific committees the application of this Convention and facilitate, when necessary, the friendly settlement of all difficulties related to its application.

Article 32 – Denunciation

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

[27] Moldova and Slovakia opposed to allow for this reservation possibility. The Russian Federation is to this as well and suggested a package including Articles 4(3) and 6 as binding with an option for a reservation.

Article 33 – Notification

The Secretary General of the Council of Europe shall notify the Parties, the member States of the Council of Europe, the non-member States having participated in the elaboration of this Convention or enjoying observer status with the Council of Europe, the European Union, and any State having been invited to sign this Convention in accordance with the provisions of Article 28, of:

a. any signature;
b. the deposit of any instrument of ratification, acceptance or approval;
c. any date of entry into force of this Convention in accordance with Article 28;
d. any amendment adopted in accordance with Article 27 and the date on which such an amendment enters into force;
e. any reservation made under Article 14, paragraph 5, any withdrawal of a reservation made in accordance with Article 30;
f. any denunciation made in pursuance of the provisions of Article 32;
g. any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done in [.....], this [..] day of [.....], in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention or enjoy observer status with the Council of Europe, to the European Union and to any State invited to sign this Convention.

APPENDIX IV

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 23 October 2012 PC-TO (2012) 13 EN (rev 1) EN

RESTRICTED

Committee of Experts on Trafficking in Human Organs, Tissues and Cells (PC-TO)

Preliminary draft Explanatory Report to the

Preliminary draft Council of Europe Convention against Trafficking in Human Organs

Document prepared by the Secretariat of
the Directorate General Human Rights and Rule of Law (DG1)

1. The Committee of Ministers of the Council of Europe took note of this Explanatory Report at its meeting held at its Deputies' level, on.

2. The text of this Explanatory Report does not constitute an instrument providing an authoritative interpretation of the Convention, although it might be of such a nature as to facilitate the application of the provisions contained therein.

Introduction

3. The existence of a world-wide illicit trade in human organs for the purposes of transplantation is a well-established fact, and various means have been adopted, both at national and international levels, to counter this criminal activity, which presents a clear danger to both individual and public health and is in breach of human rights and fundamental freedoms and an affront to the very notion of human dignity and personal liberty.

4. Hence, both the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (2000) and the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) of 16 May 2005 contain provisions criminalising the trafficking in human beings for the purpose of the removal of organs.

5. Furthermore, the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (CETS No.164) of 4 April 1997 prohibits, in its Article 21, that the human body and its parts, as such, give rise to financial gain. This prohibition is developed in the Additional Protocol to the Convention on Human Rights and Biomedicine concerning the Transplantation of Organs and Tissues of Human Origin (CETS No. 186) of 24 January 2002 which explicitly prohibits organ trafficking in its Article 22. In accordance with Article 26 of the aforesaid Additional Protocol, States Parties should provide for appropriate sanctions to be applied in the event of infringement of the prohibition.

6. In 2008, the Council of Europe and the United Nations agreed to prepare a “Joint Study on trafficking in organs, tissues and cells (OTC) and trafficking in human beings for the purpose of the removal of organs”. This Joint Study, which was published in 2009, identified a number of issues related to the trafficking in human organs, tissues and cells which deserved further consideration, in particular the need to distinguish clearly between trafficking in human beings for the purpose of the removal of organs and the trafficking in human organs *per se*; the need to uphold the principle of prohibition of making financial gains with the human body or its parts; the need to promote organ donation; the need to collect reliable data

on trafficking in organs, tissues and cells, as well as the need for an internationally agreed definition of trafficking in organs, tissues and cells.

7. Most importantly, the Joint Study contained a recommendation to elaborate an international legal instrument setting out a definition of trafficking in organs, tissues and cells (OTC) and the measures to prevent such trafficking and protect the victims, as well as the criminal law measures to punish the crime.

8. Against this background, the Committee of Ministers on 16 November 2010 decided to invite the European Committee on Crime Problems (CDPC), the Steering Committee on Bioethics (CDBI) and the European Committee on Transplantation of Organs (CD-P-TO) to identify the main elements that could form part of an international binding legal instrument and report back to the Committee of Ministers by April 2011.

9. In their report of 20 April 2011, the three aforesaid Steering Committees underlined that "trafficking in human organs, tissues and cells is a problem of global proportions that violates basic human rights and fundamental freedoms and constitutes a direct threat to individual and public health". The above mentioned three Committees further pointed out that "despite the existence of two international legal binding instruments *[namely the aforesaid UN Trafficking Protocol and the CoE Trafficking Convention]*, important loopholes, that are not sufficiently addressed by these instruments, continue to exist in the international legal framework".

10. In particular, the three Steering Committees came to the conclusion that existing international legal instruments "only address the scenario where recourse is had to various coercive or fraudulent measures to exploit a person in the context of the removal of organs, but do not sufficiently cover scenarios, in which the donor has – adequately – consented to the removal of organs or – for other reasons – is not considered to be a victim of trafficking in terms of the [….] conventions".

11. The three Steering Committees therefore proposed for the Council of Europe to elaborate a binding international criminal law convention against trafficking in human organs, possibly also covering tissues and cells, to fill the gaps in existing international law.

12. By decisions of 6 July 2011, and 22–23 February 2012, respectively, the Committee of Ministers established the ad-hoc Committee of Experts on Trafficking in Human Organs, Tissues and Cells (PC-TO) and tasked it with the elaboration of a draft criminal law convention against trafficking in human organs, and, if appropriate, a draft additional protocol to the aforesaid draft criminal law convention against trafficking in human tissues and cells.

13. The PC-TO held a total of four meetings in Strasbourg, on 13–16 December 2011, on 6–9 March, on 26–29 June, and on 15–19 October 2012 and elaborated a preliminary draft Convention against Trafficking in Human Organs.

14. The draft text of the Convention was finalised by the European Committee on Crime Problems (CDPC) at its plenary meeting, 4 – 7 December 2012.

Preamble

[….]

Chapter I – Purpose [and use of terms]

Article 1 – Purpose

15. Paragraph 1 sets out the purposes of the Convention, which are to prevent and combat the trafficking in human organs, to protect the rights of victims and to facilitate co-operation at both national and international levels on action against trafficking in human organs.

16. Paragraph 2 provides for the establishment of a specific follow-up mechanism (Articles 23–25) in order to ensure an effective implementation of the Convention.

Article 2 – Scope and use of terms

17. Article 2, paragraph 1, defines the scope of the Convention as applying to the illicit removal and trafficking in human organs for purposes of transplantation or other purposes. [28]

18. The negotiators of the Convention decided to use the term “other purposes” as a general reference to any purpose other than transplantation, for which organs illicitly removed from a donor could now, or in the future, be used for further explanation of what the term “other purposes” may cover, reference is made to paragraph 37 of the Explanatory Report.

19. [Article 2, paragraph 2, contains two definitions: one of “trafficking in human organs” and one of “human organ”.]

20. Given the complexity of the criminal actions comprising “trafficking in human organs”, involving different actors and different criminal acts, the negotiators of the Convention considered it less useful to attempt to formulate an all-encompassing definition of the crime to serve as a basis for specifying the description of the offences in Chapter II of the Convention. Instead, the various provisions contained in Chapter II of the Convention, on “Substantive Criminal

[28] Proposal from Austria and Germany (PC-TO (2012)21) not accepted by several delegations.

Law", enumerate one or more criminal acts which, whether committed on their own or in conjunction with one another, all constitute trafficking in human organs. Nevertheless, the negotiators considered it necessary to refer to "trafficking in human organs" as a comprehensive phenomenon in other parts of the Convention. Accordingly, Article 2, paragraph 2, contains such a definition of "trafficking in human organs", which essentially consists of a reference to the substantive criminal law provisions setting out the different criminal acts constituting "trafficking in human organs".

21. As regards the definition of "human organ", the negotiators decided to take over the internationally recognised definition used by the European Union in Article 3, letter (h), of its "Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation".

Article 3 – Principle of non-discrimination

22. This article prohibits discrimination in Parties' implementation of the Convention and in particular in enjoyment of measures to protect and promote victims' rights. The meaning of discrimination in Article 3 is identical to that given to it under Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

23. The concept of discrimination has been interpreted consistently by the European Court of Human Rights in its case law concerning Article 14 ECHR. In particular, this case law has made clear that not every distinction or difference of treatment amounts to discrimination. As the Court has stated, for example in the *Abdulaziz, Cabales and Balkandali v. the United Kingdom* judgment, "a difference of treatment is discriminatory if it 'has no objective and reasonable justification', that is, if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality between the means employed and the aim sought to be realised".

24. The list of non-discrimination grounds in Article 3 is based on that in Article 14 ECHR and the list contained in Article 1 of Protocol No. 12 to the ECHR. However, the negotiators wished to include also the non-discrimination grounds of age, sexual orientation, state of health and disability. "State of health" includes in particular HIV status. The list of non-discrimination grounds is not exhaustive, but indicative, and should not give rise to unwarranted a contrario interpretations as regards discrimination based on grounds not so included. It is worth pointing out that the European Court of Human Rights has applied Article 14 to discrimination grounds not explicitly mentioned in that provision (see, for example, as concerns the ground of sexual orientation, the judgment of 21 December 1999 in *Salgueiro*

da Silva Mouta v. Portugal). The reference to “or other status” could refer, for example, to members of refugee or immigrant populations

Chapter II – Substantive Criminal Law

25. Chapter II contains the substantive criminal law provisions of the Convention. [It should be noted that each of the criminal acts set out in Articles 4–9, on their own or in conjunction with one another, all constitute “trafficking in human organs”, cf. Article 2, paragraph 2.] It is clear from the wording of the provisions, that Parties are only obliged to criminalise the acts set out in them, if they are committed intentionally. The interpretation of the word “intentionally” is left to domestic law, but the requirement for intentional conduct relates to all the elements of the offence. As always in criminal law conventions of the Council of Europe, this does not mean that Parties would not be allowed to go beyond this minimum requirement by also criminalising non-intentional acts.

26. The negotiators took note that a number of States would – under any circumstances – refrain from prosecuting organ donors for committing these offences. Other States have indicated that organ donors could under their domestic law, under certain conditions, also be considered as having participated in, or even instigated, the trafficking in human organs. As the provisions are formulated, it is left to the discretion of Parties, in accordance with their domestic law, to decide whether or not, organ donors should be subject to prosecution.

27. The negotiators wished to stress that the obligations contained in this Convention do not require Parties to take measures that run counter to constitutional rules or fundamental principles relating to the freedom of the press and the freedom of expression in other media.

Article 4 – Illicit removal of human organs for transplantation or other purposes

28. [Article 4, paragraph 1, letters a – c, obliges Parties to the Convention to establish as a criminal offence the removal of human organs from living or deceased donors in the following cases: Lack of a free, informed and specific (autonomous) consent by the donor or authorisation by the domestic law of the Party in question (letter a); a financial gain or comparable advantage has been offered or received in exchange for the removal of organs from a living donor (letter b), or a deceased donor (letter c). Though the illicit removal of human organs may in practice involve elements of all the acts described in letters a – c, it is enough that one of the three conditions are fulfilled to establish that the crime described in Article 4, paragraph 1, has been committed.

29. Article 4, paragraph 2, specifies that the expression of “financial gain or comparable advantage” as used in in paragraphs 1, b and c does not include compensation for loss of earnings and any other justifiable expenses caused by the removal of an organ or the related medical examinations, or compensation in case of damage which is not inherent to the removal or organs. The negotiators considered it necessary to include this wording, which is taken from the Additional Protocol (CETS No. 186) to the Oviedo Convention (CETS No. 164) concerning Transplantation of Organs and Tissues of Human Origin, in order to clearly distinguish the lawful compensation to organ donors in certain cases from the prohibited practice of making financial gains with the human body or its parts.]

    The financial gain or comparable advantage should be understood in a broad context. The gain can be offered to the donor or third person, directly or through intermediaries. Nevertheless, an organ received in a context of pooled or chain donations, if foreseen in domestic law, does not constitute a comparable advantage.

30. Paragraph 3, obliges Parties to the Convention to *consider* establishing as a criminal offence the removal of human organs from living or deceased donors, where the removal is performed outside the framework of its domestic transplantation system, or in breach of essential principles of national transplantation laws or rules. [A Party, which does not consider it necessary to establish the described act as a criminal offence may nevertheless consider establishing the act as a regulatory offence, if possible under its domestic legal system.]

31. The negotiators were not in agreement over the question whether or not it would be appropriate to require Parties to sanction organ removal or implantation, if it is performed “outside of the framework of the domestic transplantation systems”, i.e. outside of the system for procurement and transplantation of organs authorised by the competent authorities of the Party in question, and/or in breach of its national transplantation rules or laws. Some States considered that normally any organ removal or transplantation that may be considered to be performed outside of the system (or in breach of transplantation law) would also constitute one of the criminal offences under paragraph 1 of Article 4. Other states did not share this position. Negotiators agreed that it would be appropriate to specifically address these situations in paragraph 3 of Article 4 of the Convention, while recognising that States currently have very different domestic transplantation systems in place, and that the aim of the present Convention is not to harmonise domestic transplantation systems.

32. Similarly, the negotiators recognised that in some States, removal of organs performed outside of the framework of the domestic transplantation system would *per se* not necessarily be considered as more than a regulatory or minor offence, i.e. if the same act does not also fall under paragraph 1 of Article 4.

33. Because of the aforesaid differences in the various domestic transplantation systems and domestic legal systems of States, the negotiators decided to leave a certain margin of appreciation to Parties with regard to whether or not to establish as a criminal offence the removal of organs from living or deceased donors under the conditions described in Article 4, paragraph 3.

Article 5 – Use of illicitly removed organs for purposes of implantation or other purposes than implantation

34. Article 5 obliges the Parties to the Convention to establish as a criminal offence under its domestic law the use of illicitly removed organs – either for implantation or for any other purpose.

35. Concerning what constitutes use of an illicitly removed organ for other purposes than implantation, the negotiators primarily identified scientific research as such a purpose, but taking into account, *inter alia*, the possibility of future developments in the use of organs for therapeutic purposes other than implantation, decided to leave this open. As in the case of implantation, the obligation for Parties to criminalise the subsequent use of the illicitly removed organ is limited to those situations where the perpetrator acts intentionally.

Article 6 – Implantation of organs outside of the domestic transplantation system or in breach of essential principles of national transplantation law

36. Article 6 obliges Parties to consider establishing as a criminal offence the implantation of organs performed outside of the framework of their domestic transplantation systems, or where the implantation is performed in breach of essential principles of national transplantation laws or rules.

37. As in the case of Article 4, paragraph 3, and for the same reasons, the negotiators preferred to leave a certain margin of appreciation to Parties with regard to whether or not to establish as a criminal offence the implantation of organs from living or deceased donors under the conditions described in Article 6. A Party, which does not consider it necessary to establish the described act as a criminal offence should nevertheless consider to, at least, establish the act as a regulatory offence, if possible under its domestic legal system.

Article 7 – Illicit solicitation, recruitment, offering and requesting of undue advantages

38. [Article 7, paragraph 1, obliges Parties to criminalise the illicit solicitation and recruitment of organ donors and recipients for financial gain or comparable advantage, either for the person soliciting or recruiting or for a third party. The aim of the provision is thus to criminalise the activities of persons operating as an interface between and bringing together donors, recipients and medical staff.

These activities constitute an essential element of the trafficking in human organs. The negotiators considered that advertising is a form of solicitation and therefore decided not to include a specific provision on advertising in Article 7. Instead they decided to introduce in Article 21, paragraph 3 an explicit obligation for States Parties to prohibit the advertising of the need for, or availability of human organs, with a view to offering or seeking financial gain or comparable advantage.]

39. [Article 7, paragraphs 2 and 3, obliges Parties to criminalise active and passive corruption, respectively, of healthcare professionals, public officials or persons working for private sector entities with a view to having a removal or implantation of a human organ performed under the circumstances described in Article 4, paragraph 1, or Article 5 and where appropriate Article 4, paragraph 3 or Article 6.]

40. The wording of Article 7, paragraphs 2 and 3 is inspired by Articles 2 and 7 of the Criminal Law Convention on Corruption (CETS No. 173). The negotiators considered it useful to include these provisions in the present Convention, as not all Parties to the Convention will necessarily be Parties to the Criminal Law Convention on Corruption.

Article 8 – Preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs

41. [Article 8 obliges Parties to establish the preparation, preservation, storage, transportation, transfer, receipt, import and export of organs removed under the conditions described in Article 4, paragraph 1 and, where appropriate, in Article 4, paragraph 3, when committed intentionally, as a criminal offence.]

42. Due to differences in the legal systems of member States, some States Parties may, when transposing the Convention into their domestic law, choose to establish the offences enumerated in Article 8 as a separate criminal offence, or alternatively consider them as aiding under Article 9.

Article 9 – Aiding or abetting and attempt

43. [Paragraph 1 requires Parties to establish as offences aiding or abetting the commission of the offences established in accordance with this Convention. Liability arises for aiding or abetting where the person who commits a crime is aided by another person who also intends the crime to be committed.]

44. Paragraph 2 provides for the criminalisation of an attempt to commit the offences established in accordance with this Convention.

45. The interpretation of the word “attempt” is left to domestic law. The principle of proportionality, as referred to in the Preamble of the Convention, should be taken

into account by Parties when distinguishing between the concept of attempt and mere preparatory acts which do not warrant criminalisation.

46. [Paragraph 3 allows for the Parties to declare reservations with regard to the application of paragraph 1 (aiding or abetting) and paragraph 2 (attempt) to offences established in accordance with Articles 7 and 8. , due to differences in the criminal law systems of member States of the Council of Europe.][29]

47. As with all the offences established under the Convention, it requires the criminalisation of aiding or abetting and attempt only if committed intentionally.

Article 10 – Corporate liability

48. Article 10 is consistent with the current legal trend towards recognising corporate liability. The negotiators were of the opinion that due to the gravity of offences related to trafficking in human organs, it is appropriate to include corporate liability in the Convention. The intention is to make commercial companies, associations and similar legal entities ("legal persons") liable for criminal actions performed on their behalf by anyone in a leading position in them. Article 10 also contemplates liability where someone in a leading position fails to supervise or check on an employee or agent of the entity, thus enabling them to commit any of the offences established in the Convention.

49. Under paragraph 1, four conditions need to be met for liability to attach. First, one of the offences described in the Convention must have been committed. Second, the offence must have been committed for the entity's benefit. Third, a person in a leading position must have committed the offence (including aiding and abetting). The term "person who has a leading position" refers to someone who is organisationally senior, such as a director. Fourth, the person in a leading position must have acted on the basis of one of his or her powers (whether to represent the entity or take decisions or perform supervision), demonstrating that that person acted under his or her authority to incur liability of the entity. In short, paragraph 1 requires Parties to be able to impose liability on legal entities solely for offences committed by such persons in leading positions.

50. In addition, paragraph 2 requires Parties to be able to impose liability on a legal entity ("legal person") where the crime is committed not by the leading person described in paragraph 1 but by another person acting on the entity's authority, i.e. one of its employees or agents acting within their powers. The conditions that must be fulfilled before liability can attach are: 1) the offence was committed by an employee or agent of the legal entity; 2) the offence was committed for the entity's benefit; and 3) commission of the offence was made possible by the

[29] The Russian Federation is against this wording.

leading person's failure to supervise the employee or agent. In this context failure to supervise should be interpreted to include not taking appropriate and reasonable steps to prevent employees or agents from engaging in criminal activities on the entity's behalf. Such appropriate and reasonable steps could be determined by various factors, such as the type of business, its size, and the rules and good practices in force.

51. Liability under this article may be criminal, civil or administrative. It is open to each Party to provide, according to its legal principles, for any or all of these forms of liability as long as the requirements of Article 11 paragraph 2 are met, namely that the sanction or measure be "effective, proportionate and dissuasive" and include monetary sanctions.

52. Paragraph 4 makes it clear that corporate liability does not exclude individual liability. In a particular case there may be liability at several levels simultaneously – for example, liability of one of the legal entity's organs, liability of the legal entity as a whole and individual liability in connection with one or other.

Article 11 – Sanctions and measures

53. [This article is closely linked to Articles 4 to 8, which define the various offences that should be made punishable under domestic law. In accordance with the obligations imposed by those articles, Article 11 requires Parties to match their action to the seriousness of the offences and lay down sanctions which are "effective, proportionate and dissuasive". In the case of an individual committing an offence established under Article 4, paragraph 1, Article 5, Articles 7, 8 [and 9], Parties must provide for prison sentences that can give rise to extradition. It should be noted that, under Article 2 of the European Convention on Extradition (CETS No. 24), extradition is to be granted in respect of offences punishable under the laws of the requesting and requested Parties by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Offences under Article 4, paragraph 3 and Article 6 may, depending on the legal system of Parties and the seriousness of the infraction not always necessitate criminal sanctions. Fines of a non-criminal (i.e. regulatory or administrative) nature may therefore be considered sufficient in view of the overall context and structure of domestic law and penal sanctions. As stated above, Parties are only obliged to consider establishing these offences as criminal offences.]

54. Legal entities whose liability is to be established under Article 10 are also to be liable to sanctions that are "effective, proportionate and dissuasive", which may be criminal, administrative or civil in character. Paragraph 2 requires Parties to provide for the possibility of imposing monetary sanctions on legal persons.

55. In addition, paragraph 2 provides for other measures which may be taken in respect of legal persons, with particular examples given: temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision; or a judicial winding-up order. The list of measures is not mandatory or exhaustive and Parties are free to apply none of these measures or envisage other measures.

56. Paragraph 3 requires Parties to ensure that measures concerning seizure and confiscation of the proceeds derived from [criminal] offences can be taken. This paragraph has to be read in the light of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS No. 141) as well as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), which are based on the idea that confiscating the proceeds of crime is an effective anti-crime weapon. As most of the [criminal] offences related to the trafficking in human organs are undertaken for financial profit, measures depriving offenders of assets linked to or resulting from the offence are clearly needed in this field as well.

57. Paragraph 3 a, provides for the seizure and confiscation of proceeds of the offences, or property whose value corresponds to such proceeds may be seized or confiscated.

58. The Convention does not contain definitions of the terms “confiscation”, “proceeds” and “property”. However, Article 1 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime provides definitions for these terms which may be used for the purposes of this Convention. By “confiscation” is meant a penalty or measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in final deprivation of property. “Proceeds” means any economic advantage or financial saving from a criminal offence. It may consist of any “property” (see the interpretation of that term below). The wording of the paragraph takes into account that there may be differences of national law as regards the type of property which can be confiscated after an offence. It can be possible to confiscate items which are (direct) proceeds of the offence or other property of the offender which, though not directly acquired through the offence, is equivalent in value to its direct proceeds (“substitute assets”). “Property” must therefore be interpreted, in this context, as any property, corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property.

59. Paragraph 3 b of Article 11 provides for the closure of any establishment used to carry out any of the [criminal] offences established under the Convention. This measure is almost identical to Article 23, paragraph 4 of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and

Article 24, paragraph 3, b of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201). Alternatively, the provision also allows the perpetrator to be banned, temporarily or permanently, in conformity with the relevant provisions of domestic law, from carrying on the professional activity in connection with which the [criminal offence] was committed. The negotiators considered it necessary to make a reference to the domestic law of States Parties, since differences exist with regard to the exact measures to be applied and procedures to be followed when banning a person from exercising a professional activity. Moreover differences exist as to whether or not certain professions require the issuing of a license or other type of authorisation by public authorities.

Article 12 – Aggravating circumstances

60. Article 12 requires Parties to ensure that certain circumstances (mentioned in letters a. to e.) may be taken into consideration as aggravating circumstances in the determination of the sanction for offences established in this Convention. This obligation does not apply to cases where the aggravating circumstances already form part of the constituent elements of the offence in the national law of the State Party.

61. By the use of the phrase “may be taken into consideration”, the negotiators highlighted that the Convention places an obligation on Parties to ensure that these aggravating circumstances are available for judges to consider when sentencing offenders, although there is no obligation on judges to apply them. The reference to “in conformity with the relevant provisions of domestic law” is intended to reflect the fact that the various legal systems in Europe have different approaches to address those aggravating circumstances and permits Parties to retain their fundamental legal concepts.

62. The first aggravating circumstance (a), is where the offence caused the death of, or serious damage to the physical [or mental] health of, the victim. Given the fact that any transplantation carries a significant element of danger for the physical health of both the donor and the recipient, it should be up to the national courts of the Parties to assess the causal link between the conducts criminalised under the Convention and any death or injury sustained as a result thereof.

63. [The second aggravating circumstance (b) is where the offence was committed by persons abusing the confidence placed in them in their professional capacity. This category of persons is in the first line obviously health professionals, but also public officials (when acting in their official capacity) would be covered. However, the application of the aggravating circumstance is not restricted to health professionals and public officials.]

64. The third aggravating circumstance (c) is where the offence involved a criminal organisation. The Convention does not define “criminal organisation”. In applying this provision, however, Parties may take their line from other international instruments which define the concept. For example, Article 2(a) of the United Nations Convention against Transnational Organised Crime defines “organised criminal group” as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”. Recommendation Rec(2001)11 of the Committee of Ministers to member States concerning guiding principles on the fight against organised crime and the EU Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime give very similar definitions of “organised criminal group” and “criminal organisation”.

65. The fourth aggravating circumstance (d) is where the perpetrator has previously been convicted of offences established under the Convention. By including this, the negotiators wanted to signal the need to make a concerted effort to combat recidivism in the low risk – high financial gain area of trafficking in human organs.

66. The fifth aggravating circumstance (e) is where the offence was committed against a child or any other particularly vulnerable person. The negotiators were of the opinion that most persons who would qualify as victims of trafficking in human organs are by definition vulnerable, e. g. because they are financially severely disadvantaged, which is the case for many persons who agree to have an organ removed against financial gain or comparable advantage, or because they are suffering from severe or even terminal diseases with little chances of survival, which is the case for many recipients of organs. Likewise, children are always particularly vulnerable to crime. Hence the negotiators would reserve the aggravating circumstance set out in letter e. to situations where the victim is a child or otherwise “particularly vulnerable” because of his/her age, mental development or familial or social dependence on the perpetrator(s). The term “child” is not explicitly defined in the Convention, but should be understood as the same as in the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), namely “any person under the age of 18 years”. This definition is ultimately derived from the UN Convention on the Rights of the Child (1989), where it is found in Article 1.

Article 13 – Previous convictions

67. Trafficking in human organs is more often than not perpetrated transnationally by criminal organisations or by individual persons, some of whom may have been tried and convicted in more than one country. At domestic level, many legal systems provide for a different, often harsher, penalty where someone has previous convictions. In general, only conviction by a national court counts as a previous conviction. Traditionally, previous convictions by foreign courts were not

taken into account on the grounds that criminal law is a national matter and that there can be differences of national law, and because of a degree of suspicion of decisions by foreign courts.

68. Such arguments have less force today in that internationalisation of criminal law standards – as a pendent to internationalisation of crime – is tending to harmonise different countries' law. In addition, in the space of a few decades, countries have adopted instruments such as the ECHR whose implementation has helped build a solid foundation of common guarantees that inspire greater confidence in the justice systems of all the participating States.

69. The principle of international recidivism is established in a number of international legal instruments. Under Article 36 paragraph 2 (iii) of the New York Convention of 30 March 1961 on Narcotic Drugs, for example, foreign convictions have to be taken into account for the purpose of establishing recidivism, subject to each Party's constitutional provisions, legal system and national law. Under Article 1 of the Council Framework Decision of 6 December 2001 amending Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro, European Union Member States must recognise as establishing habitual criminality final decisions handed down in another Member State for counterfeiting of currency.

70. The fact remains that at international level there is no standard concept of recidivism and the law of some countries does not have the concept at all. The fact that foreign convictions are not always brought to the courts' notice for sentencing purposes is an additional practical difficulty. However, in the framework of the European Union, Article 3 of the Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings has established in a general way – without limitation to specific offences – the obligation of taking into account a previous conviction handed down in another (EU Member) State.

71. Therefore Article 13 provides for the possibility to take into account final sentences passed by another Party in assessing a sentence. To comply with the provision Parties may provide in their domestic law that previous convictions by foreign courts may, to the same extent as previous convictions by domestic courts would do so, result in a harsher penalty. They may also provide that, under their general powers to assess the individual's circumstances in setting the sentence, courts should take those convictions into account. This possibility should also include the principle that the offender should not be treated less favourably than he would have been treated if the previous conviction had been a national conviction.

72. This provision does not place any positive obligation on courts or prosecution services to take steps to find out whether persons being prosecuted have received final sentences from another Party's courts. It should nevertheless be noted that, under Article 13 of the European Convention on Mutual Assistance in Criminal Matters (CETS No. 30), a Party's judicial authorities may request from another Party extracts from and information relating to judicial records, if needed in a criminal matter. In the framework of the European Union, the issues related to the exchange of information contained in criminal records between Member States are regulated in two legal acts, namely Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record and Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States.

Chapter III – Criminal procedural Law

Article 14 – Jurisdiction

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

74. Paragraph, 1 letter a. is based on the territoriality principle. Each Party is required to punish the offences established under the Convention when they are committed on its territory.

75. Paragraph 1, letters b. and c. are based on a variant of the territoriality principle. These sub-paragraphs require each Party to establish jurisdiction over offences committed on ships flying its flag or aircraft registered under its laws. This obligation is already in force in the law of many countries, ships and aircraft being frequently under the jurisdiction of the State in which they are registered. This type of jurisdiction is extremely useful when the ship or aircraft is not located in the country's territory at the time of commission of the crime, as a result of which paragraph 1, letter a. would not be available as a basis for asserting jurisdiction. In the case of a crime committed on a ship or aircraft outside the territory of the flag or registry Party, it might be that without this rule there would not be any country able to exercise jurisdiction. In addition, if a crime is committed on board a ship or aircraft which is merely passing through the waters or airspace of another State, there may be significant practical impediments to the latter State's exercising its jurisdiction and it is therefore useful for the registry State to also have jurisdiction.

76. Paragraph 1, letter 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 sub-paragraph d, if one of its nationals commits an offence abroad, a Party is obliged to be able to prosecute him/her. The negotiators considered that this was a particularly important provision in the context of combating trafficking in human organs. Indeed, certain States in which trafficking in human organs takes place either do not have the will or the necessary resources to successfully carry out investigations or lack the appropriate legal framework. Paragraph 4 enables these cases to be tried even where they are not criminalised in the State in which the offence was committed.

77. Paragraph 1, letter e. 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, and thus contribute to the punishment trafficking in human organs. However, the criteria of attachment to the State of the person concerned being less strong than the criteria of nationality, paragraph 3 allows Parties not to implement this jurisdiction or only to do it in specific cases or conditions.

79. bis According to paragraph 2, the Parties shall establish jurisdiction also, if a national or a person having habitual residence is a victim of an offence committed abroad

79. ter Paragraph 3 provides for Parties to enter reservations on the application of the jurisdiction rules laid down in paragraph 1, d and e, as well as paragraph 2.

78. Paragraph 4 prohibits the subordination of the initiation of proceedings, which is based on the jurisdiction provided for in paragraphs 1 d. and 1 e. to the conditions usually required of a complaint of the victim or a denunciation from the authorities of the State in which the offence took place. Indeed, certain States in which trafficking in human organs take place do not always have the necessary will or resources to carry out investigations. In these conditions, the requirement of an official denunciation or of a complaint of the victim often constitutes an impediment to the prosecution. This paragraph applies to all the offences defined in Chapter II (Substantive Criminal Law).

79. In paragraph 5 the negotiators wished to introduce the possibility for Parties to limit the application of paragraph 4 by entering a reservation. Parties making use of this possibility may thus subordinate the initiation of prosecution of alleged trafficking in human organs to cases where a report has been filed by a victim, or the State Party has received a denunciation from the State of the place where the offence was committed.

80. Paragraph 6 concerns the principle of *aut dedere aut judicare* (extradite or prosecute). Jurisdiction established on the basis of paragraph 6 is necessary to ensure that Parties that refuse to extradite a national have the legal ability to undertake investigations and proceedings domestically instead, if asked to do so

by the Party that requested extradition under the terms of the relevant international instruments.

81. In certain cases of trafficking in human organs, it may happen that more than one Party has jurisdiction over some or all of the participants in an offence. For example, an organ donor may be recruited in one country and have the organ in question removed in another. In order to avoid duplication of procedures and unnecessary inconvenience for witnesses or to otherwise facilitate the efficiency or fairness of proceedings, the affected Parties are required to consult in order to determine the proper venue for prosecution. In some cases it will be most effective for them to choose a single venue 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 paragraph 7. 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 proceeding, it may delay or decline consultation.

82. The bases of jurisdiction set out in paragraph 1 are not exclusive. Paragraph 8 of this article permits Parties to establish other types of criminal jurisdiction according to their domestic law.

Article 15 – Initiation and continuation of proceedings

83. Article 15 is designed to enable the public authorities to prosecute offences established in accordance with the Convention ex officio, without a victim having to file a complaint. The purpose of this provision is to facilitate prosecution, in particular by ensuring that criminal proceedings may continue regardless of pressure or threats by the perpetrators of offences towards victims.

Article 16 – Criminal investigations

84. Article 16 provides for Parties to ensure the effective investigation and prosecution of offences established under the Convention in accordance with the fundamental principles of their domestic law. The notion of "principles of domestic law" should be understood as also encompassing basic human rights, including those provided under Article 6 of the ECHR. [The negotiators noted that conducting effective criminal investigations may imply the use of special investigation techniques in accordance with the domestic law of the Party in question, such as financial investigations, covert operations, and controlled delivery. However, the negotiators also noted that Parties are not legally obliged by the Convention to make use of such techniques.]

Article 17 – International co-operation in criminal matters

85. The article sets out the general principles that should govern international co-operation in criminal matters.

86. Paragraph 1 obliges Parties to co-operate, on the basis of relevant international and national law, to the widest extent possible for the purpose of investigations or proceedings of crimes established under the Convention, including for the purpose of carrying out seizure and confiscation measures. In this context, particular reference should be made to the European Convention on Extradition (CETS No. 24), the European Convention on Mutual Assistance in Criminal Matters (CETS No. 30), the European Convention on the Transfer of Sentenced Persons (CETS No. 112), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS No. 141) and the Council of Europe Convention Laundering, Search, Seizure and Confiscation of the proceeds from Crime and on the Financing of Terrorism (CETS No.198).

87. In the same way as for paragraph 1, paragraph 2 obliges Parties to co-operate, to the widest extent possible and on the basis of relevant international, regional and bilateral legal instruments, on extradition and mutual legal assistance in criminal matters concerning the offences established by the Convention.

88. Paragraph 3 invites a Party that makes mutual assistance in criminal matters or extradition conditional on the existence of a treaty to consider the Convention as the legal basis for judicial co-operation with a Party with which it has not concluded such a treaty. This provision is of interest because of the possibility provided to third States to sign the Convention (cf. Article 28). The requested Party will act on such a request in accordance with the relevant provisions of its domestic law which may provide for conditions or grounds for refusal. Any action taken shall be in full compliance with its obligations under international law, including obligations under international human rights instruments.

Chapter IV – Protection measures

89. The protection of, and assistance to, victims of crime has long been a priority in the work of the Council of Europe.

90. The horizontal legal instrument in this field is the European Convention on the Compensation of Victims of Violent Crime (CETS No. 116) from 1983, which has since been supplemented by a series of recommendations, notably Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, Recommendation No. R (87) 21 on the assistance to victims and the prevention of victimisation and Recommendation Rec(2006)8 on assistance to crime victims.

91. Furthermore, the situation of victims has also been addressed in a number of specialised conventions, including the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), both from 2005, and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) from 2007.

92. Taking into account the potential grave consequences for victims of trafficking in human organs, the negotiators found that it was justified to provide specifically for the protection of such victims, and also to ensure that victims of the crimes established under this Convention have access to information relevant to their case and the protection of their health and other rights from the competent national authorities and that – subject to the domestic law of the Parties – they are being given the possibility to be heard and to supply evidence.

93. It is recalled that, the term "victim" is not defined in the Convention, as the negotiators felt that the determination of who could qualify as victims of trafficking in human organs was better left to the Parties to decide in accordance with their domestic law.

Article 18 – Protection of victims

94. Article 18 provides for the protection of the rights and interests of victims, in particular by requiring Parties to ensure that victims are given access to information relevant for their case and necessary to protect their health and other rights involved; that victims are assisted in their physical, psychological and social recovery, and that victims are provided with the right to compensation from the perpetrators under the domestic law of the Parties. As regards the right to compensation, the negotiators noted that in a number of member States of the Council of Europe, national victim funds are already in existence. However, this provision does not oblige Parties to establish such funds.

Article 19 – Standing of victims in criminal proceedings

95. This article contains a non-exhaustive list of procedures designed to victims of crimes established under this Convention during investigations and proceedings. These general measures of protection apply at all stages of the criminal proceedings, both during the investigations (whether they are carried out by a police service or a judicial authority) and during criminal trial proceedings.

96. First of all, Article 19 sets out the right of victims to be informed of their rights and of the services at their disposal and, upon request, the follow-up given to their complaint, the charges, the state of the criminal proceedings (unless in

exceptional cases the proper handing of the case may be adversely affected), their role therein as well as the outcome of their cases.

97. Article 19 goes on to list a number of procedural rules designed to implement the general principles set out in the provision: the possibility, for victims, of being heard, of supplying evidence (in a manner consistent with the procedural rules of the domestic law of a Party),, have their views, needs and concerns presented and considered, directly or through an intermediary, and of being protected against any risk of intimidation and retaliation.

98. Paragraph 2 also covers administrative proceedings, since procedures for compensating victims are of this type in some States. More generally, there are also situations in which protective measures, even in the context of criminal proceedings, may be delegated to the administrative authorities.

99. Paragraph 3 provides for access, in accordance with domestic law and free of charge, where warranted, to legal aid for victims of trafficking in human organs. Judicial [and administrative] procedures are often highly complex and victims therefore need the assistance of legal counsel to be able to assert their rights satisfactorily. This provision does not afford victims an automatic right to legal aid. The conditions under which such aid is granted must be determined by each Party to the Convention when the victim is entitled to be a party to the criminal proceedings.

100. In addition to Article 20 paragraph 3, dealing with the status of victims as parties to criminal proceedings, the States Parties must take account of Article 6 of the ECHR. Even though Article 6, paragraph 3.c. of the ECHR provides for the free assistance of an officially assigned defence counsel only in the case of persons charged with criminal offences, the case law of the European Court of Human Rights (Airey v. Ireland judgement, 9 October 1979) also, in certain circumstances, recognises the right to free assistance from an officially assigned defence counsel in civil proceedings, under Article 6, paragraph 1 ECHR, which is interpreted as enshrining the right of access to a court for the purposes of obtaining a decision concerning civil rights and obligations (Golder v. United Kingdom judgment, 21 February 1975). The Court took the view that effective access to a court might necessitate the free assistance of a lawyer. For instance, the Court considered that it was necessary to ascertain whether it would be effective for the person in question to appear in court without the assistance of counsel, i.e. whether he could argue his case adequately and satisfactorily. To this end, the Court took account of the complexity of the proceedings and the passions involved – which might be incompatible with the degree of objectivity needed in order to plead in court – so as to determine whether the person in question was in a position to argue his own case effectively and held that, if not, he should be able to obtain free assistance from an officially assigned defence counsel. Thus, even in the absence of legislation affording access to an officially assigned defence counsel in civil cases, it is up to the court to assess whether, in

the interests of justice, a destitute party unable to afford a lawyer's fees must be provided with legal assistance.

101. Paragraph 4 is based on Article 11, paragraphs 2 and 3, of the Framework Decision of 15 March 2001 of the Council of the European Union on the standing of victims in criminal proceedings. It is designed to make it easier for victims to file a complaint by enabling them to lodge it with the competent authorities of the State of residence. A similar provision is also found in Article 38, paragraph 2 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) of 25 October 2007 and in the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health (CETS No. 211) of 28 October 2011.

102. Paragraph 5 provides for the possibility for various organisations to support victims. The reference to conditions provided for by internal law highlights the fact that it is up to the Parties to make provision for assistance or support, but that they are free to do so in accordance with the rules laid down in their national systems, for example by requiring certification or approval of the organisations, foundations, associations and other bodies concerned.

Article 20 – Protection of witnesses

103. Article 20 is inspired by Article 24, paragraph 1, of the United Nations Convention against Transnational Organized Crime (Palermo Convention) from 2000. Paragraph 1 obliges Parties to provide effective protection from potential retaliation or intimidation for witnesses giving testimony in criminal proceedings concerning trafficking in human organs. As appropriate the protection should be extended to relatives and other persons close to the witnesses. Paragraph 2 of Article 20 provides for the protection of victims in so far as they are witnesses, in the same manner as set out in paragraph 1.

104. It should be noted that the extent of this obligation for Parties to protect witnesses is limited by the wording “within its means and in accordance with the conditions provided for by its domestic law”.

Chapter V – Prevention measures

105. It is standard for recent criminal law conventions of the Council of Europe to contain provisions aiming at the prevention of criminal activity. The present Convention is no exception, and the negotiators found that such preventive measures should be implemented at both domestic and international levels in order to have effect.

Article 21 – Measures at domestic level

106. The purpose of Article 21 is to prevent trafficking in human organs by obliging Parties to address some of its root causes. Hence Parties shall in accordance with paragraph 1 ensure the existence of a transparent domestic system for the transplantation organs; equitable access to transplantation services for patients, and finally, adequate collection, analysis and exchange of relevant information pertaining to trafficking in human organs between all relevant domestic authorities. Parties may wish to consider the provisions of Articles 3 – 8 of the Additional protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin (CETS No. 186), when reviewing their current transplantation systems in the light of this Article.

107. The issue of "transparency" is important, because it reduces the risk of illicitly removed organs being introduced into the legitimate domestic transplantation system. "Equitable access to transplantation services" not only means that Parties should ensure a "level playing field" in terms of the allocation of organs for all patients awaiting implantation, but that they should also endeavour to ensure that there is sufficient access to organs. Ensuring a strong cooperation between the many different competent authorities involved in combatting trafficking in human organs is a prerequisite for achieving any measure of success. In this respect, the negotiators decided to put special emphasis on the collection, analysis and exchange of information between these authorities, thus enabling them to take timely action to prevent the crimes set out in the Convention.

108. Paragraph 2, point i. obliges Parties to take measures, as appropriate, with regard to providing information and strengthening training, e. g. on how to detect indications of trafficking in human organs, for healthcare professionals and relevant officials, such as police and customs officers. According to point ii. Parties are furthermore obliged to promote awareness-raising campaigns on the unlawfulness and dangers of trafficking in human organs addressed to the general public.

109. Finally, paragraph 3 obliges Parties to prohibit the advertising of the need for, or availability of, human organs "with a view to offering or seeking financial gain or comparable advantage". Parties must accordingly take the necessary measures to enforce such prohibition in an efficient manner. The negotiators considered this provision necessary, taking into account the existence of e.g. websites on the internet where human organs are put up for sale. Cf also paragraph 29.

Article 22 – Measures at international level

110. Article 22 obliges Parties to co-operate, to the widest extent possible, with the aim of preventing trafficking in human organs by: (i.) reporting to the Committee of the Parties, on its request, on the number of cases of trafficking in human organs

d within their respective jurisdictions; (ii.) designate a national contact point for the exchange of information between Parties pertaining to trafficking in human organs.

111. These measures were deemed necessary by the negotiators in order to be able to assess the impact of the Convention and to ensure effective international cooperation.

Chapter VI – Follow-up mechanism

112. Chapter VI of the Convention contains provisions which aim at ensuring the effective implementation of the Convention by the Parties. The monitoring system foreseen by the Convention is based essentially on a body, the Committee of the Parties, composed of representatives of the Parties to the Convention.

Article 23 – Committee of the Parties

113. Article 23 provides for the setting-up of a committee under the Convention, the Committee of the Parties, which is a body with the composition described above, responsible for a number of Convention-based follow-up tasks.

114. The Committee of the Parties will be convened the first time by the Secretary General of the Council of Europe, within a year of the entry into force of the Convention by virtue of the 10th ratification. It will then meet at the request of a third of the Parties or of the Secretary General of the Council of Europe.

115. It should be stressed that the negotiators intended to allow the Convention to come into force quickly while deferring the introduction of the follow-up mechanism until such time as the Convention was ratified by a sufficient number of States for it to operate under satisfactory conditions, with a sufficient number of representative Parties to ensure its credibility.

116. The setting-up of this body will ensure equal participation of all the Parties in the decision-making process and in the Convention monitoring procedure and will also strengthen co-operation between the Parties to ensure proper and effective implementation of the Convention.

117. The Committee of the Parties must adopt rules of procedure establishing the way in which the monitoring system of the Convention operates, on the understanding that its rules of procedure must be drafted in such a way that the implementation of the Convention by the Parties, including the European Union, is effectively monitored.

118. The Committee of Ministers shall decide on the way in which those Parties which are not member States of the Council of Europe are to contribute to the financing of these activities. The Committee of Ministers shall seek the opinion of those Parties which are not member States of the Council of Europe before deciding on the budgetary appropriations to be allocated to the Committee of the Parties.

Article 24 – Other representatives

119. Article 24 contains an important message concerning the participation of bodies other than the Parties themselves in the Convention monitoring mechanism in order to ensure a genuinely multisectoral and multidisciplinary approach. It refers, firstly, to the Parliamentary Assembly and the European Committee on Crime Problems (CDPC), and, secondly, more unspecified, to other relevant intergovernmental or scientific committees of the Council of Europe which, by virtue of their responsibilities would definitely make a worthwhile contribution by taking part in the monitoring of the work on the Convention. These committees are the Committee on Bioethics (DH-BIO) and the European Committee on Transplantation of Organs (CD-P-TO).

120. The importance afforded to involving representatives of relevant international bodies and of relevant official bodies of the Parties, as well as representatives of civil society in the work of the Committee of the Parties is undoubtedly one of the main strengths of the monitoring system provided for by the negotiators. The wording “relevant international bodies” in paragraph 3, is to be understood as inter-governmental bodies active in the field covered by the Convention. The wording “relevant official bodies” in paragraph 4, refers to officially recognised national or international bodies of experts working in an advisory capacity for Parties to the Convention in the field covered by the Convention, in particular as regards bioethics and transplantation of human organs.

121. The possibility of admitting representatives of inter-governmental, governmental and non-governmental organisations and other bodies actively involved in preventing and combating trafficking in human organs as observers was considered to be an important issue, if the monitoring of the application of the Convention was to be truly effective.

122. Paragraph 6 prescribes that when appointing representatives as observers under paragraphs 2 to 5 (Council of Europe bodies, international bodies, official bodies of the Parties and representatives of non-governmental organisations), a balanced representation of the different sectors and disciplines involved (the law enforcement authorities, the judiciary, the health authorities, as well as civil society interest groups) shall be ensured.

123. When drafting this provision, the negotiators wanted to base itself on the similar provision of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS. No. 201), creating as simple and flexible a mechanism as possible, centred on a Committee of the Parties with a broader role in the Council of Europe's legal work on combating the trafficking in human organs. The Committee of the Parties is thus destined to serve as a centre for the collection, analysis and sharing of information, experiences and good practice between Parties to improve their policies in this field using a multisectoral and multidisciplinary approach.

124. With respect to the Convention, the Committee of the Parties has the traditional follow-up competencies and:

– plays a role in the effective implementation of the Convention, by making proposals to facilitate or improve the effective use and implementation of the Convention, including the identification of any problems and the effects of any declarations made under the Convention;

– plays a general advisory role in respect of the Convention by expressing an opinion on any question concerning the application of the Convention, including by making specific recommendations to Parties in this respect;

– serves as a clearing house and facilitates the exchange of information on significant legal, policy or technological developments in relation to the application of the provisions of the Convention. In this context, the Committee of the Parties may avail itself of the expertise of relevant committees and other bodies of the Council of Europe.

125. Paragraph 4 states that the European Committee on Crime Problems (CDPC) should be kept periodically informed of the activities mentioned in paragraphs 1, 2 and 3 of Article 25.

Chapter VII – Relationship with other international instruments

Article 26 – Relationship with other international instruments

126. Article 26 deals with the relationship between the Convention and other international instruments.

127. In accordance with the 1969 Vienna Convention on the Law of Treaties, Article 26 seeks to ensure that the Convention harmoniously coexists with other treaties – whether multilateral or bilateral – or instruments dealing with matters which the Convention also covers. Article 26, paragraph 1 aims at ensuring that this Convention does not prejudice the rights and obligations derived from other international instruments to which the Parties to this Convention are also Parties

or will become Parties, and which contain provisions on matters governed by this Convention.

128. Article 26, paragraph 2 states positively that Parties may conclude bilateral or multilateral agreements – or any other legal instrument – relating to the matters which the Convention governs. However, the wording makes clear that Parties are not allowed to conclude any agreement which derogates from this Convention.

129. Following the signature of a Memorandum of Understanding between the Council of Europe and the European Union on 23 May 2007, the CDPC took note that "legal co-operation should be further developed between the Council of Europe and the European Union with a view to ensuring coherence between Community and European Union law and the standards of Council of Europe conventions. This does not prevent Community and European Union law from adopting more far-reaching rules."

Chapter VIII – Amendments to the Convention

130. Amendments to the provisions of the Convention may be proposed by the Parties. They must be communicated to all Council of Europe member States, to any signatory, to any Party, to the non-member States having participated in the elaboration of the Convention, to States enjoying observer status with the Council of Europe, to the European Union and to any State invited to sign the Convention.

131. The CDPC and other relevant Council of Europe intergovernmental or scientific committees will prepare opinions on the proposed amendment, which will be submitted to the Committee of the Parties. After considering the proposed amendment and the opinion submitted by the Committee of the Parties, the Committee of Ministers can adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe. Before deciding on the amendment, the Committee of Ministers shall consult and obtain the unanimous consent of all Parties. Such a requirement recognises that all Parties to the Convention should be able to participate in the decision-making process concerning amendments and are on an equal footing.

Chapter IX – Final clauses

132. With some exceptions, Articles 28 to 33 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 28 – Signature and entry into force

133. The Convention is open for signature by Council of Europe member States, the European Union, and States not members of the Council of Europe which took part in drawing it up (the Holy See, Japan and Mexico) and States enjoying observer status with the Council of Europe. In addition, with a view to encouraging the participation of the largest possible non-member States to the Convention, this article provides them with the possibility, subject to an invitation by the Committee of Ministers, to sign and ratify the Convention even before its entry into force. By doing so, this Convention departs from previous Council of Europe treaty practice according to which non-member States which have not participated in the elaboration of a Council of Europe Convention usually accede to it after its entry into force.

134. Article 28 paragraph 3 sets the number of ratifications, acceptances or approvals required for the Convention's entry into force at five. This number 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 group of Parties is needed to successfully set about addressing the major challenge of combating trafficking in human organs. Of the five Parties which will make the Convention enter into force, at least three must be Council of Europe members.

Article 28bis – Signature and entry into force

135. Paragraph 1 states that the Convention is open for signature not only by Council of Europe member States but also the European Union and States not member of the Council of Europe (the Holy See, Japan and Mexico) which took part in drawing it up. Once the Convention enters into force, in accordance with paragraph 3, other non-member States not covered by this provision may be invited to accede to the Convention in accordance with Article 28ter, paragraph 1.

136. Paragraph 2 states that the Secretary General of the Council of Europe is the depositary of the instruments of ratification, acceptance or approval of this Convention.

137. Paragraph 3 sets the number of ratifications, acceptances or approvals required for the Convention's entry into force at 10. This figure reflects the belief that a significant group of States is needed to successfully set about addressing the challenge of preventing and combating trafficking in human organs. The number is not so high, however, as to unnecessarily delay the Convention's entry

into force. In accordance with the treaty-making practice of the Organisation, of the ten initial States, at least eight must be Council of Europe members.

Article 28ter – Accession to the Convention

138. After consulting the Parties and obtaining their unanimous consent, the Committee of Ministers may invite any State not a Council of Europe member which did not participate in drawing up the Convention to accede to it. This decision requires the two-thirds majority provided for in Article 20.d of the Statute of the Council of Europe and the unanimous vote of the Parties to this Convention.

Article 29 – Territorial application

139. This provision is only concerned with territories having a special status, such as overseas territories, the Faroe Islands or Greenland in the case of Denmark, or Gibraltar, the Isle of Man, Jersey or Guernsey in the case of the United Kingdom.

140. 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.

Article 30 – Reservations

141. Article 30 specifies that the Parties may make use of the reservations expressly authorised by the Convention. No other reservation may be made. The negotiators wished to underline the fact that reservations can be withdrawn at any moment.

[Article 30, paragraph 3 allows Parties to enter a reservation limiting the scope of application to the illicit removal and trafficking in human organs for purposes of transplantation only, thereby excluding its application to "other purposes".]

Article 31 – Dispute settlement

142. Article 31 provides that the Committee of the Parties, in close co-operation with the European Committee on Crime Problems (CDPC) and other relevant Council of Europe intergovernmental [or scientific] committees, shall follow the application of the Convention and facilitate the solution of all disputes related thereto between the Parties. Coordination with the CDPC will normally be

ensured through the participation of a representative of the CDPC in the Committee of the Parties.

Article 32 – Denunciation

143. Article 32 allows any Party to denounce the Convention.

Article 33 – Notification

144. Article 33 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).

APPENDIX V

21 September 2012

MJU-31 (2012) RESOL. E

31st Council of Europe Conference of Ministers of Justice

Vienna, Austria, 19 – 21 September 2012

RESOLUTION

on

Responses of justice to urban violence

THE MINISTERS participating in the 31st Council of Europe Conference of Ministers of Justice (Vienna, Austria, 19-21 September 2012),

1. Welcoming the report of the Minister of Justice of Austria "Urban Violence – Juveniles – New Media. Tackling the current challenges in Austria" and the contributions made by the delegations attending the Conference;

2. Recalling the European Convention on Human Rights and its Protocols and the relevant case law of the European Court of Human Rights;

3. Recalling moreover the United Nations Convention on the Rights of the Child, the Committee of Ministers' Recommendations (2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, (2008)11 on the European Rules for juvenile offenders subject to sanctions and measures and (2009)10 on integrated national strategies for the protection of children from violence, the Committee of Ministers Guidelines on Child-Friendly Justice (2010), as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No 108) and its Additional Protocol (CETS No. 181);

4. Concerned about the rise of intensive and at times unexpected outbreaks of collective violence in some major urban areas in Europe, such as riots, arson, muggings and looting in which juveniles are often involved as perpetrators and/or victims;

5. Noting that these outbreaks seem at least partly prepared by organised groups and that they lead to a general feeling of insecurity and to substantial economic losses and conscious that there is great public interest in having such outbreaks stopped as soon as possible and in having those responsible brought to justice;

6. Recognising that European societies are currently facing a deep economic and social crisis, which exacerbates unemployment and financial hardship and is conducive to the deterioration of living conditions and the social climate in certain urban areas;

7. Aware of the fact that these factors may contribute to increased social tension and to the feeling of social exclusion and neglect, especially among juveniles who are vulnerable when confronted with instigators who incite riots and other forms of urban violence, notably through Internet, social networks and other information and communication technologies;

8. Underlining that acts of urban violence may range from minor offences to very serious crimes and that therefore the response of the criminal justice system should take into consideration the specific circumstances of each individual case and should be based on the principle of proportionality;

9. Resolved to ensure the Human Rights of juvenile perpetrators and victims of urban violence as well as maintain public safety and prevent disorder and crime, as necessary in a democratic society;

10. Considering that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be a primary consideration;

11. Considering that legal responses to criminal behaviour by juveniles should respect their rights and, where appropriate, take due account of their views, educational, development and other specific needs in accordance with their age and level of maturity;

12. Aware that deprivation of liberty often has harmful effects on the personal and social development of juveniles and should therefore be used only as a measure of last resort, for the shortest appropriate period of time;

13. Conscious of the fact that justice systems are designed primarily to deal with adults and therefore convinced that any measures should take a multi-disciplinary and a multi-agency approach in order to address effectively the variety of problems juveniles may face;

14. Mindful of the importance of promoting the involvement of the parents, family, carers and guardians concerned in prevention measures as well as during criminal proceedings and the execution of sanctions in order to help with the social integration of children and thus prevent their involvement in acts of urban violence;

15. Underlining the need to develop child-friendly justice and to divert, where possible, juveniles away from the formal criminal justice system and ordinary criminal proceedings to more adapted forms of response, such as mediation and restorative justice taking into consideration the interests of victims and their protection;

16. Aware of the rapid development and broad availability of Internet-based communication technologies such as social networks and instant messaging, and of the fact that persons participating in acts of urban violence often use modern telecommunication technologies in the preparation of and during such acts; but also noting the potential of new technologies as

a tool for anticipating and preventing violence, gathering evidence and ensuring accountability of instigators and perpetrators of violence;

17. Determined to take the measures necessary in the context of urban violence to promote a rapid, appropriate and effective response of the justice system with regard to juvenile perpetrators and victims, to protect public order, avoid the feeling of insecurity in society and prevent the deterioration of social peace;

18. With regard to juveniles as perpetrators and victims of urban violence, agree to share best practices and use the lessons learned to consider:

    a) adopting or strengthening justice systems appropriate for juveniles in particular for tackling the growing problem of urban violence;

    b) developing restorative justice measures adapted to the needs of juveniles and using them, where appropriate, in criminal procedure;

    c) developing specialised training programmes appropriate for professionals, such as judges, prosecutors, police officers, social workers, mediators, probation and prison staff;

19. Invite the Committee of Ministers to instruct the relevant Council of Europe bodies to promote consultations with juveniles and their families in their future work related to prevention and education;

20. Invite the Committee of Ministers to instruct the European Committee on Crime Problems (CDPC) to examine:

    a) the experiences of member states with regard to preventing the involvement of juveniles in urban violence as perpetrators and/or victims and recommend, as necessary, suitable measures, in particular related to prevention and the criminal justice systems;

    b) the existing laws and practices in Europe concerning the sanctioning and treatment of juveniles involved in acts of urban violence as well as practices regarding the involvement of families, to draw up best practices in this regard and recommend, as necessary, suitable measures, in particular related to the criminal justice systems;

    c) the existing laws and practices in Europe regarding restorative justice and recommend, as necessary, specific restorative justice measures aimed at dealing with the phenomenon of urban violence and adapted to the needs of juveniles at all stages of the criminal justice procedure;

21. With regard to organised groups and their new ways of communicating, invite the Committee of Ministers to instruct the European Committee on Crime Problems (CDPC) to examine, in cooperation with other relevant Steering Committees ways to promote dialogue and cooperation between law enforcement authorities, telecommunication providers and Internet service providers in order to facilitate prevention of urban violence, as well as gathering of evidence and ensuring accountability of instigators of violence, while guaranteeing full compliance with the European Convention on Human Rights;

22. Ask the Secretary General of the Council of Europe to present a report on the steps taken to give effect to this Resolution on the occasion of their next Conference.

APPENDIX VI

Ministers' Deputies

CM Documents

CM(2012)145 26 October 2012[30]

1156 Meeting, 28 November 2012

10 Legal questions

10.2 31st Council of Europe Conference of Ministers of Justice (Vienna, 19-21 September 2012) –

Report of the Secretary General

Item to be prepared by the GR-J on 20 November 2012

Introduction

The 31st Council of Europe Conference of Ministers of Justice was held in Vienna on 19-21 September 2012 at the invitation of the Austrian Government. The theme of the Conference was "Responses of justice to urban violence" with two sub-themes: "Juveniles as perpetrators and victims" and "Organised groups and their new ways of communicating". The resolution, list of participants and programme are set out in Appendices I - III to this report.

In preparation of the conference, Ms Beatrix Karl, Federal Minister of Justice of Austria presented a report: "Urban Violence – Juveniles - New Media. Tackling the current challenges in Austria", and Mr Thorbjørn Jagland, Secretary General of the Council of Europe submitted a report on the follow-up to the resolutions adopted at the previous two conferences of the Ministers of Justice. These reports, as well as the texts of speeches, resolution and other documents related to the Conference are available on the Conference Website at http://www.coe.int/minjust.

On the eve of the Conference, two preparatory meetings were held - a Joint meeting of the Chairpersons of Council of Europe Committees and Mechanisms: the European Committee on Crime problems (CDPC), the European Committee on Legal Co-operation (CDCJ), the Steering Committee for Human Rights (CDDH), the Steering Committee on Media and Information Society (CDMSI), the European Committee for the Prevention of Torture (CPT), the European Committee of Social Rights (ECSR), the European Commission for the Efficiency of Justice (CEPEJ) and the Joint Council on Youth (CMJ), and a meeting of the Senior Officials of the Ministries of Justice, which finalised the draft resolution.

The Heads of delegation of member States at ministerial or state secretary level were invited to take part in a "Fireside-chat" hosted by the Federal Minister of Justice of Austria on the eve of the Conference. The informal discussion on the topic "Corruption – the exclusive problem of others" was led by Ms Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe.

[30]This document has been classified restricted until its examination by the Committee of Ministers.

The Federal Minister of Justice of Austria was elected chair of the Conference. Mr Veysi Kaynak, Deputy Minister of Justice of Turkey was elected Vice-Chair.

Participants

222 participants, including 39 ministers, deputy ministers, secretaries of state, under secretaries of states, from 45 member States, 3 observer States, the European Union, the Organisation for Security and Co-operation in Europe (OSCE), the UNICEF, the United Nations Office on Drugs and Crime (UNODC) and the European Fundamental Agency for Fundamental Rights (FRA) took part in the Conference.

Opening session

The Deputy Secretary General of the Council of Europe, the Federal Minister of Justice of Austria, Mr Ermal Dobi, Deputy Minister of Justice of Albania, on behalf of the Albanian Chairmanship of the Committee of Ministers of the Council of Europe, Mr Christopher Chope, Chairperson of the Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe, Mr Keith Whitmore, President of the Congress of Local and Regional Authorities of the Council of Europe, Mr Nils Muižnieks, Council of Europe Commissioner for Human Rights and Mr Yury Fedotov, Executive Director of the United Nations Office on Drugs and Crime, Director-General of the United Nations Office in Vienna, addressed the opening session.

Session I of the Conference on "Juveniles as Perpetrators and Victims" was moderated by Dr Roland Miklau, former Director General for Criminal Law in the Federal Ministry of Justice of Austria.

Participants agreed that urban violence is a broad, multifaceted issue and that the justice system alone cannot resolve all problems related to it – in any case, the justice system intervenes at a late stage, when urban violence has occurred. They underlined the need of a multidisciplinary approach and closer co-ordination between the various authorities concerned, where the school and the family have an important role to play. Preventive measures and timely detection of high-risk situations are essential. Most important of all, young people must have something to look forward to - a future as part of society.

The response of justice to urban violence must satisfy two imperatives: the need to protect society and guarantee the rule of law and the need to have due regard to children's best interests and their specific needs, in accordance with their age and level of maturity.

Juvenile delinquents should be taken care of as soon as possible in order to prevent reoffending. Member States should have laws and justice systems that are appropriate for juveniles, including specific provisions, both substantive and procedural, for juveniles. All participants agreed that custodial sentences should be used only as a measure of last resort and that the period spent in custody should be as short as possible. Alternative measures, such as mediation, restorative justice and community service give better results with juveniles.

In any event, the primary objective of the justice system must be the reintegration of juvenile offenders into society.

The ministers agreed to share best practices and use the lessons learned to consider adopting or strengthening justice systems appropriate for juveniles in particular for tackling the growing problem of urban violence; developing restorative justice measures adapted to the needs of juveniles and using them, where appropriate, in criminal procedure and developing specialised training programmes appropriate for professionals, such as judges, prosecutors, police officers, social workers, mediators, probation and prison staff.

They invited the Committee of Ministers to instruct the European Committee on Crime Problems (CDPC) to examine the experiences of member states with regard to preventing the involvement of juveniles in urban violence as perpetrators and/or victims and recommend, as necessary, suitable measures, in particular related to prevention and the criminal justice systems; to examine the existing laws and practices in Europe concerning the sanctioning and treatment of juveniles involved in acts of urban violence as well as practices

regarding the involvement of families, to draw up best practices in this regard and recommend, as necessary, suitable measures, in particular related to the criminal justice systems and to do the same with existing laws and practices in Europe regarding restorative justice and recommend, as necessary, specific restorative justice measures aimed at dealing with the phenomenon of urban violence and adapted to the needs of juveniles at all stages of the criminal justice procedure.

Session II of the Conference on "Organised Groups and their New Ways of Communicating" was moderated by Ambassador Dr Hans Winkler, Director of the Vienna Diplomatic Academy, former State Secretary in the Federal Ministry of Foreign Affairs of Austria.

Contrary to the sub-theme of juveniles as perpetrators and victims – a topic which has long been attracting the interest of both scholars and practitioners - the use by juveniles of social networks, instant messaging and Internet in general and the role of these both in instigating and curbing urban violence are recent developments, transversal in nature, which the justice systems are only beginning to address, with much less experience and fewer proven answers to learn from. Moreover, in this inter-sectorial area there is a great variety and disparity between member States with regard to the involvement and the roles of state bodies such as Ministries of Interior, of Justice, of Communication, but also of private telecommunication and Internet service providers.

Nevertheless, as regards the use of new technologies, there exist a solid basis in the European Convention of Human Rights and the case-law of the European Court of Human Rights. Any interference with the freedom of expression or the freedom of association, and any interference with private life must have a legal basis, pursue a legitimate aim and respect the key principle of proportionality.

While acknowledging the temptation to block the use of the new technologies in times of urban violence, those who spoke were in favour of working transversally to find effective ways of putting a stop to the violence and ensuring that those responsible, the "ring-leaders", are swiftly identified, evidence is preserved and collected and justice is done.

The Ministers invited the Committee of Ministers to instruct the European Committee on Crime Problems (CDPC) to examine, in cooperation with other relevant Steering Committees ways to promote dialogue and cooperation between law enforcement authorities, telecommunication providers and Internet service providers in order to facilitate prevention of urban violence, as well as gathering of evidence and ensuring accountability of instigators of violence, while guaranteeing full compliance with the European Convention on Human Rights.

Closing session
The Federal Minister of Justice of Austria and Mr Philippe Boillat, Director General of the Directorate General Human Rights and Rule of Law in the Council of Europe, delivered the closing remarks.

Outcomes

The Ministers adopted a Resolution on Responses of Justice to Urban Violence.

A Treaty Ceremony was held on the occasion of the opening for signature of the Fourth Additional Protocol to the European Convention on Extradition. In all, 17 member states signed 5 Council of Europe Conventions and Protocols, amounting to 22 signatures.

The CEPEJ report "Evaluation of European Judicial Systems 2012" was presented at a side event during the Conference.

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The Deputy Secretary General of the Council of Europe thanks the Austrian authorities for the excellent organisation of the Conference and the warm welcome extended to all participants.

Appendix I - Resolution on Responses of justice to urban violence

THE MINISTERS participating in the 31st Council of Europe Conference of Ministers of Justice (Vienna, Austria, 19-21 September 2012),

23. Welcoming the report of the Minister of Justice of Austria “Urban Violence – Juveniles – New Media. Tackling the current challenges in Austria” and the contributions made by the delegations attending the Conference;

24. Recalling the European Convention on Human Rights and its Protocols and the relevant case law of the European Court of Human Rights;

25. Recalling moreover the United Nations Convention on the Rights of the Child, the Committee of Ministers’ Recommendations (2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, (2008)11 on the European Rules for juvenile offenders subject to sanctions and measures and (2009)10 on integrated national strategies for the protection of children from violence, the Committee of Ministers Guidelines on Child-Friendly Justice (2010), as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108) and its Additional Protocol (CETS No. 181);

26. Concerned about the rise of intensive and at times unexpected outbreaks of collective violence in some major urban areas in Europe, such as riots, arson, muggings and looting in which juveniles are often involved as perpetrators and/or victims;

27. Noting that these outbreaks seem at least partly prepared by organised groups and that they lead to a general feeling of insecurity and to substantial economic losses and conscious that there is great public interest in having such outbreaks stopped as soon as possible and in having those responsible brought to justice;

28. Recognising that European societies are currently facing a deep economic and social crisis, which exacerbates unemployment and financial hardship and is conducive to the deterioration of living conditions and the social climate in certain urban areas;

29. Aware of the fact that these factors may contribute to increased social tension and to the feeling of social exclusion and neglect, especially among juveniles who are vulnerable when confronted with instigators who incite riots and other forms of urban violence, notably through Internet, social networks and other information and communication technologies;

30. Underlining that acts of urban violence may range from minor offences to very serious crimes and that therefore the response of the criminal justice system should take into consideration the specific circumstances of each individual case and should be based on the principle of proportionality;

31. Resolved to ensure the human rights of juvenile perpetrators and victims of urban violence as well as to maintain public safety and prevent disorder and crime, as necessary in a democratic society;

32. Considering that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be a primary consideration;

33. Considering that legal responses to criminal behaviour by juveniles should respect their rights and, where appropriate, take due account of their views, educationaldevelopment and other specific needs in accordance with their age and level of maturity;

34. Aware that deprivation of liberty often has harmful effects on the personal and social development of juveniles and should therefore be used only as a measure of last resort, for the shortest appropriate period of time;

35. Conscious of the fact that justice systems are designed primarily to deal with adults and therefore convinced that any measures should take a multi-disciplinary and a multi-agency approach in order to address effectively the variety of problems juveniles may face;

36. Mindful of the importance of promoting the involvement of the parents, family, careers and guardians concerned in prevention measures as well as during criminal proceedings and the execution of sanctions in order to help with the social integration of children and thus prevent their involvement in acts of urban violence;

37. Underlining the need to develop child-friendly justice and to divert, where possible, juveniles away from the formal criminal justice system and ordinary criminal proceedings to more adapted forms of response, such as mediation and restorative justice taking into consideration the interests of victims and their protection;

38. Aware of the rapid development and broad availability of Internet-based communication technologies such as social networks and instant messaging, and of the fact that persons participating in acts of urban violence often use modern telecommunication technologies in the preparation of and during such acts; but also noting the potential of new technologies as a tool for anticipating and preventing violence, gathering evidence and ensuring accountability of instigators and perpetrators of violence;

39. Determined to take the measures necessary in the context of urban violence to promote a rapid, appropriate and effective response of the justice system with regard to juvenile perpetrators and victims, to protect public order, avoid the feeling of insecurity in society and prevent the deterioration of social peace;

40. With regard to juveniles as perpetrators and victims of urban violence, agree to share best practices and use the lessons learned to consider:

b) adopting or strengthening justice systems appropriate for juveniles in particular for tackling the growing problem of urban violence;

d) developing restorative justice measures adapted to the needs of juveniles and using them, where appropriate, in criminal procedure;

e) developing specialised training programmes appropriate for professionals, such as judges, prosecutors, police officers, social workers, mediators, probation and prison staff;

41. Invite the Committee of Ministers to instruct the relevant Council of Europe bodies to promote consultation with juveniles and their families in their future work related to prevention and education;

42. Invite the Committee of Ministers to instruct the European Committee on Crime Problems (CDPC) to examine:

a) the experiences of member states with regard to preventing the involvement of juveniles in urban violence as perpetrators and/or victims and recommend, as necessary, suitable measures, in particular related to prevention and the criminal justice systems;

b) the existing laws and practices in Europe concerning the sanctioning and treatment of juveniles involved in acts of urban violence as well as practices regarding the involvement of families, to draw up best practices in this regard and recommend, as necessary, suitable measures, in particular related to the criminal justice systems;

c) the existing laws and practices in Europe regarding restorative justice and recommend, as necessary, specific restorative justice measures aimed at dealing with the phenomenon of urban violence and adapted to the needs of juveniles at all stages of the criminal justice procedure;

43. With regard to organised groups and their new ways of communicating, invite the Committee of Ministers to instruct the European Committee on Crime Problems (CDPC) to examine, in cooperation with other relevant Steering Committees, ways to promote dialogue and co-operation between law enforcement authorities, telecommunication providers and Internet service providers in order to facilitate prevention of urban violence, as well as gathering of evidence and ensuring accountability of instigators of violence, while guaranteeing full compliance with the European Convention on Human Rights;

44. Ask the Secretary General of the Council of Europe to present a report on the steps taken to give effect to this Resolution on the occasion of their next Conference.

Appendix II – List of participants

COUNCIL OF EUROPE MEMBER STATES / ETAT MEMBRES DU CONSEIL DE L'EUROPE

ALBANIA / *ALBANIE*
- Mr Ermal DOBI, Deputy Minister of Justice
- Mr Arben BRACE, Director of Cabinet, Ministry of Justice

ANDORRA / *ANDORRE*
- Mr Andreu JORDI, Deputy Permanent Representative of Andorra to the Council of Europe
- Ms Marta SALVAT, Attachée, Embassy of Andorra to Austria

ARMENIA / *ARMÉNIE*
- Mr Grigor MURADYAN, first Deputy Minister of Justice
- Mr Yeghishe KIRAKOSYAN, Deputy Minister of Justice

AUSTRIA / *AUTRICHE*
- Ms Beatrix KARL, Federal Minister of Justice
- Mr Hans WINKLER, Ambassador, Director of the Vienna Diplomatic Academy
- Mr Thomas SCHÜTZENHÖFER, Chief of Cabinet, Federal Ministry of Justice
- Ms Elisabeth TÄUBL, Deputy Chief of Cabinet, Federal Ministry of Justice
- Ms Katharina REITMAYR, Member of Cabinet, Federal Ministry of Justice
- Mr Alexander PIRKER, Member of Cabinet, Federal Ministry of Justice
- Mr Sven PÖLLAUER, Member of Cabinet, Federal Ministry of Justice
- Mr Christian WIGAND, Spokesperson of the Minister, Federal Ministry of Justice
- Mr Christian PILNACEK, Director General for Criminal Law, Federal Ministry of Justice
- Mr Peter GRIDLING, Director of the Federal Office for the Protection of the Constitution
- Mr Christian MANQUET, Head of Unit for Substantive Criminal Law, Directorate General for Criminal Law, Federal Ministry of Justice
- Ms Eva SOUHRADA-KIRCHMAYER, Council of Europe Data Protection Commissioner, Executive Member of the Austrian Data Protection
- Mr Georg STAWA, Head of Unit for Projects, Strategy and Innovation, Directorate General for Central Administration and Co-ordination, Federal Ministry of Justice, and Vice-President of CEPEJ
- Mr Fritz ZEDER, Head of Unit for Juvenile Criminal Law, Directorate General for Criminal Law, Federal Ministry of Justice
- Ms Brigitte OHMS, Deputy Government Agent, Austrian Member of the Steering Committee for Human Rights
- Mr Andreas POLLAK, Deputy Director for European and International Justice Affairs, Federal Ministry of Justice
- Ms Anna SPORRER, Deputy Head of Federal Chancellery, Constitutional Service Directorate
- Mr Hans-Peter STÜCKLER, Federal Ministry for the Interior
- Ms Irene KÖCK, Deputy Head of Unit, Directorate General for Personnel and Prison Policy, Federal Ministry of Justice
- Mr Sven PÖLLAUER, Member of Cabinet, Federal Ministry of Justice
- Mr Stephan KLAUS, Legal Advisor in the Unit for Juvenile Criminal Law, Directorate General for Criminal Law, Federal Ministry of Justice
- Ms Andrea MARTINI, Legal Advisor for European and International Justice Affairs, Federal Ministry of Justice
- Mr Werner SCHÜTZ, former Head of Unit for International Family Law, Austrian member of the European Committee on Legal Co-operation

AZERBAIJAN / *AZERBAÏDJAN*
- Mr Fikrat MAMMADOV, Minister of Justice
- Mr Adil ABILOV, Assistant to the Minister of Justice, Acting Deputy Director, Human Rights and Public Relations Department, Ministry of Justice
- Mr Thaghi EYNULLAYEV, Deputy Director of Legal Co-operation Department, Ministry of Justice

- Mr Ramin GURBANOV, Chief of Reforms Division of Ministry of Justice, Candidate judge, member of the European Commission for the Efficiency of Justice (CEPEJ)
- Mr Seymur ASLANOV, Penitentiary Service Officer

BELGIUM / *BELGIQUE*
- M. Steven LIMBOURG, Conseiller général, Direction générale de la Législation, des Libertés et des Droits fondamentaux, Direction Droit pénal
- Mme Jessica FAILLA, Attachée, Service Public Fédéral Justice, Direction générale de la Législation, des Libertés et des Droits fondamentaux, Direction Droit pénal, Service des infractions et procédures particulières

BOSNIA AND HERZEGOVINA / *BOSNIE-HERZÉGOVINE*
- Mr Tomislav LEKO, Ambassador of Bosnia and Herzegovina to the Organisation for Security and Co-operation in Europe (OSCE)

BULGARIA / *BULGARIE*
- Ms Diana KOVATCHEVA, Minister of Justice
- Ms Katia HRISTOVA, Head of the Cabinet of the Minister of Justice
- Ms Irena BORISOVA, Chief Expert, Directorate of international legal co-operation and European Affairs, Ministry of Justice

CROATIA / *CROATIE*
- Mr Orsat MILJENIC, Minister of Justice
- Mr Gordan BAKOTA, Ambassador of Croatia, Vienna
- Mr Gordan MARKOTIC, Assistant Minister
- Ms Sanja NOLA, Assistant Minister
- Mr Silvio KUS, Minister Counsellor, Vienna

CYPRUS / *CHYPRE*
- Mr Loucas LOUCA, Minister of Justice and Public Order
- Mr Costas PAPADEMAS, Ambassador of Cyprus in Vienna
- Mr Spyros MILTIADES, First Secretary, Vienna
- Mr Ioannis ADAMOU, Second Secretary, Vienna
- Mr Jean Marc DEROY, Adviser, Vienna
- Ms Alexia FRANGOU, Legal Officer

CZECH REPUBLIC / *RÉPUBLIQUE TCHÈQUE*
- Mr Pavel BLAZEK, Minister of Justice
- Ms Martina KOVARIKOVA, Head of Minister´s office, Ministry of Justice
- Ms Zuzana FISEROVA, General Director, International Relations Section, Ministry of Justice
- Ms Helena LISUCHOVA, Acting Head of the International Co-operation Department, Ministry of Justice

DENMARK / *DANEMARK*
- Mr Torben BRYLLE, Danish Ambassador in Vienna
- Ms Lise BITSCH, Head of Section, Criminal Law Division, Ministry of Justice

ESTONIA / *ESTONIE*
- Ms Kristel SIITAM-NYIRI, Deputy Secretary General on Criminal Policy, Ministry of Justice
- Ms Maria SUURNA, Adviser, Ministry of Justice

FINLAND / *FINLANDE*
- Ms Anna-Maja HENRIKSSON, Minister of Justice
- Mr Pekka NURMI, Director General, Ministry of Justice
- Mr Robin HARMS, Special Advisor to the Minister of Justice
- Mr Arto KUJALA, Deputy Head of Department, Minister of Justice

FRANCE
- Mme Christiane TAUBIRA, Ministre de la justice, Garde des Sceaux
- M. Stéphane GOMPERTZ, Ambassadeur de France en Autriche
- Mme Florence MANGIN, Ambassadrice, Représentante permanente de la France auprès de l'Office des Nations Unies et des Organisations internationales à Vienne
- M. Michel DEBACQ, conseiller diplomatique, Ministère de la Justice
- Mme Pascale BRUSTON, Conseillère, Ministère de la Justice
- Mme Marie-Suzanne LE QUEAU, Directrice des affaires criminelles et des grâces, Ministère de la Justice
- M. Eric MAITREPIERRE, Chef du Service des affaires européennes et internationales, Ministère de la Justice
- Mme Fabienne SCHALLER, Chargée de Mission pour les négociations et la transposition des normes pénales internationales, Direction des affaires criminelles et des grâces, Ministère de la Justice
- M. Didier WIOLAND, Attaché de sécurité intérieure, Ambassade de France en Autriche
- Mme Catherine CALOTHY, Première conseillère, Ambassade de France en Autriche
- Mme Sonja SCHNITZER, Interprète

GEORGIA / *GÉORGIE*
- Ms Tina BURJALIANI, Deputy Minister of Justice
- Mr Paata GAPRINDASHVILI, Ambassador of Georgia to Austria
- Ms Babuca PATARAIA, Head of Department, Ministry of Justice
- Mr Levan DIASAMIDZE, Georgian Envoy to Austria, Georgian Embassy

GERMANY / *ALLEMAGNE*
- Ms Birgit GRUNDMANN, State Secretary, Federal Ministry of Justice
- Mr Eberhard DESCH, Head of the Division of International Law, Federal Ministry of Justice
- Mr Ralf RIEGEL, Head of Division, International Criminal Law, European and Multilateral Cooperation in Criminal Matters, Federal Ministry of Justice
- Mr Heiko HOLSTE, Desk Officer, Federal Ministry of Justice

GREECE / *GRÈCE*
- Mr Marinos SKANDAMIS, Secretary General of Crime Policy, Ministry of Justice

HUNGARY / *HONGRIE*
- Mr Róbert RÉPÁSSY, Minister of State for Justice
- Ms Katalin KISZELY, Deputy State Secretary for European Union and International Judicial Cooperation, Ministry of Justice

ICELAND / *ISLANDE*
- Mr Ögmundur JÓNASSON, Minister of the Interior

IRELAND / *IRLANDE*
- Mr Gerry HAYES, Assistant Principal Officer, Ministry of Justice
- Mr Joe GAVIN, Assistant Principal Officer, Ministry of Justice

ITALY / *ITALIE*
- Ms Caterina CHINNICI, Head of the Juvenile Justice Department
- Mr Eugenio SELVAGGI, Head of Department, Legal Affairs, Ministry of Justice
- Mr Carlo PERROTTA, Diplomatic Adviser to the Minister, Ministry of Justice
- Mr Alessio SCARCELLA, Head of the International Affairs Department, Ministry of Justice
- Ms Silvia BAROCCI, Head of the Press Department and Spokesperson of the Minister
- Ms Luciana SANGIOVANNI, Judge, Head of the Central Authority, Department of Justice for Juveniles

LATVIA / *LETTONIE*
- Mr Jānis BORDĀNS, Minister of Justice
- Mr Mārtiņš LAZDOVSKIS, State Secretary, Ministry of Justice

LIECHTENSTEIN
- Ms Maria-Pia KOTHBAUER, Princess of Liechtenstein, Ambassador of Liechtenstein to Austria
- Mr Carlo RANZONI, Judge, Vaduz
- Mr Hubert WACHTER, Government Officer, Ministry of Justice, Vaduz

LITHUANIA / *LITUANIE*
- Mr Tomas VAITKEVIČIUS, Vice-Minister of Justice
- Ms Vygante MILASIUTE, Head of International Treaty Law Division, Ministry of Justice

LUXEMBOURG
- M. Guy SCHLEDER, Administrateur Général, Ministère de la justice, Luxembourg
- Ms Claudine KONSBRUCK, Conseiller de gouvernement première classe, Ministère de la justice, Luxembourg

MALTA / *MALTE*
- Mr Frans BORG, Permanent Secretary, Ministry for Justice
- Mr Peter GRECH, Attorney General, Office of The Attorney General

REPUBLIC OF MOLDOVA / *REPUBLIQUE DE MOLDOVA*
- M. Oleg EFRIM, Ministre de la Justice
- Mme Sabrina CERBU, Conseillère, Chef du Cabinet du ministre de la Justice
- Mme Julia GEORGHIES, Chef du Service des relations internationales et de l'intégration européenne, Ministère de la justice

MONACO
- M. Philippe NARMINO, Ministre plénipotentiaire, Directeur des Services Judiciaires, Président du Conseil d'État
- Ms Marina CEYSSAC, Conseillère auprès du Directeur des Services Judiciaires, Direction des Services Judiciaires

MONTENEGRO / *MONTÉNÉGRO*
-

NETHERLANDS / *PAYS-BAS*

- Mr Ivo OPSTELTEN, Minister of Security and Justice
- Mr Jan TERSTEGEN, Director of the European and International Affairs Department, Ministry of Security and Justice
- Mr Jan RADEMAKER, Counsellor, Justice Affairs, Permanent Representation of the Kingdom of the Netherlands to the Council of Europe, Strasbourg, France
- Ms Anna LODEWEGES, Policy Co-ordinator at the European and International Affairs Department, Ministry of Security and Justice
- Mr Jean FRANSMAN, Press Officer, Ministry of Security and Justice

NORWAY / *NORVÈGE*
- Ms Astri AAS-HANSEN, State Secretary, Ministry of Justice
- Mr Lars MELING, Senior adviser, Police department, Ministry of Justice

POLAND / *POLOGNE*
- Mr Michał KRÓLIKOWSKI, Under-Secretary of State, Ministry of Justice
- Ms Agnieszka DĄBROWIECKA, Deputy Director, Department of International Co-operation and European Law, Ministry of Justice
- Mr Tomasz OSTROPOLSKI, Head of Office in the Department of Criminal Law, Ministry of Justice

PORTUGAL
- Mr Antonio COSTA MOURA, Director-General of Justice Policy, Ministry of Justice

- Ms Patricia FERREIRA ALBUQUERQUE, Director of the Directorate-General of Justice policy, Ministry of Justice

ROMANIA / *ROUMANIE*
- Ms Simona-Maya TEODOROIU, Secretary of State
- Mr Andrei FURDUI, Counsellor, National Office for Crime Prevention and Asset Recovery, Ministry of Justice
- Ms Iuliana CARBUNARU, Director, Department of Probation, Ministry of Justice

RUSSIAN FEDERATION / *FÉDÉRATION DE RUSSIE*
- Ms Elena BORISENKO, Deputy Minister of Justice
- Mr Denis W. KUSNEDELEW, Ambassador of Russia in Vienna
- Ms Polina IVLIEVA, Expert, Ministry of Justice
- Mr Lev TEREKHOV, Interpreter

SAN MARINO / *SAINT-MARIN*
-

SERBIA / *SERBIE*
- Mr Nikola SELAKOVIC, Minister of Justice and Public Administration
- Mr Dejan CAREVIC, Head of Cabinet of Minister of Justice and Public Administration
- Mr Cedomir BACKOVIC, Assistant Minister of Justice and Public Administration

SLOVAK REPUBLIC / *RÉPUBLIQUE SLOVAQUE*
- Mr Tomáš BOREC, Minister of Justice
- Ms Lucia KURILOVSKA, Director General, Ministry of Justice

SLOVENIA / *SLOVÉNIE*
- Mr Helmut HARTMAN, State Secretary at Ministry of Justice and Public Administration
- Ms Irena VOGRINČIČ, Adviser, International Cooperation Service, Ministry of Justice and Public Administration

SPAIN / *ESPAGNE*
- Mr Fernando ROMÁN, State Secretary
- Ms Susana CRISÓSTOMO, Chief of Cabinet, Ministry of Justice
- Mr Ángel LLORENTE, Director General of the Directorate for International Legal Co-operation, Ministry of Justice
- Mr Inigo MARTINEZ, Ministry of Justice

SWEDEN / *SUÈDE*
- Ms Beatrice ASK, Minister of Justice
- Mr Magnus GRANER, State Secretary, Ministry of Justice
- Ms Anna-Carin SVENSSSON, Director General for International Affairs, Ministry of Justice
- Ms Anna LINDBERG, Deputy Director, Ministry of Justice
- Ms Frida TOTTMAR, Desk Officer, Ministry of Justice

SWITZERLAND / *SUISSE*
- M. Michael LEUPOLD, Secrétaire d'Etat et Directeur de l'Office fédéral de la justice
- Mme Beatrice KALBERMATTER, Collaboratrice scientifique, unité Exécution des peines et des mesures, Office fédéral de la justice
- M. Frank SCHÜRMANN, Agent du gouvernement devant la Cour européenne des droits de l'homme, Office fédéral de la justice

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" / *"L'EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE"*
- Mr Blerim BEXHETI, Minister of Justice

- Ms Sanja DIMOVSKA, Associate and Interpreter to the Minister, Ministry of justice
- Ms Lindita SALIJI, Protocol officer, Ministry of Justice

TURKEY / *TURQUIE*
- Mr Veysi KAYNAK, Deputy Minister of Justice
- Mr Mehmet POLAT, Deputy General Director, General Directorate of International Law and Foreign Relations
- Mr Erhan POLAT, Deputy General Director, General Directorate of Prisons and Detention Houses, Ministry of Justice
- Ms Ayben ÝYISOY, Rapporteur Judge, General Directorate of International Law and Foreign Relations, Ministry of Justice
- Ms Nimet MEDIHA IŞITMAN, Interpreter, General Directorate of International Law and Foreign Relations, Ministry of Justice
- Ms Ayten GÜNDÖNER, Interpreter, General Directorate of International Law and Foreign Relations, Ministry of Justice

UKRAINE
- Mr Oleksandr LAVRYNOVYCH, Minister of Justice
- Mr Vladyslav GURTENKO, Assistant of the Minister of Justice

UNITED KINGDOM / *ROYAUME-UNI*
- Mr Jeremy WRIGHT MP, Under Secretary of State for Justice, Court Service and Legal Aid, Ministry of Justice
- Ms Abigail CULANK, Private Secretary to Mr Jeremy WRIGHT MP, Under Secretary of State for HM Court Service and Legal Aid
- Mr Edwin KILBY, Head of European Strategy and Institutions, Ministry of Justice

OBSERVERS / *OBSERVATEURS*

HOLY SEE / *SAINT-SIÈGE*
- Son Eminence Révérendissime Mgr Peter Stephan ZURBRIGGEN, Nonce Apostolique en Autriche
- M. Thierry RAMBAUD, Professeur des Universités, France

UNITED STATES / *ETATS-UNIS*
-

CANADA
- Ms Paula MIRAGLIA, Director General, International Centre for the Prevention of Crime, Montreal

JAPAN / *JAPON*
- Apologised - *Excusé*

MEXICO / *MEXIQUE*
- Mr Enrique CAMARGO SUÁREZ, Representative, Mexican Attorney General's Office, Legal Attaché's Office for UNODC, Vienna

COUNCIL OF EUROPE COMMITTEES AND MECHANISMS
COMITÉS ET MÉCANISMES DU CONSEIL DE L'EUROPE

EUROPEAN COMMITTEE ON LEGAL CO-OPERATION (CDCJ) / *COMITÉ EUROPÉEN DE COOPÉRATION JURIDIQUE (CDCJ)*
- Mr Eberhard DESCH, Chair of the European Committee on Legal Co-operation, Head of Division of International Law, Federal Ministry of Justice, Germany

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC) / *COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS (CDPC)*

- Mr Lorenzo SALAZAR, Chairman of the European Committee on Crime Problems, Director of the Office of the Legislative and International Questions, Directorate General of Criminal Justice, Ministry of Justice, Italy

STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH) / *COMITÉ DIRECTEUR POUR LES DROITS DE L'HOMME (CDDH)*

- Mr Derek WALTON, Chair of the Steering Committee for Human Rights, Agent to the European Court of Human Rights, Foreign and Commonwealth Office, United Kingdom

STEERING COMMITTEE ON MEDIA AND INFORMATION SOCIETY (CDMSI) / *COMITE DIRECTEUR SUR LES MEDIAS ET LA SOCIETE DE L'INFORMATION (CDMSI)*

- Mr Andris MELLAKAULS, Chair of the Steering Committee on Media and Information Society (CDMSI), Social Integration Department, Ministry of Culture, Latvia

EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE (CPT) / *COMITÉ EUROPÉEN POUR LA PRÉVENTION DE LA TORTURE (CPT)*

- Mr Latif HÜSEYNOV, President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Azerbaijan

EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ) / *COMMISSION EUROPÉENNE POUR L'EFFICACITE DE LA JUSTICE (CEPEJ)*

- Mr John STACEY, President of the European Commission for the Efficiency of Justice, International Consultant for Court Administration, United Kingdom
- Mr Georg STAWA, Vice-Chair of the European Commission for the Efficiency of Justice, Head of Unit for Projects, Strategy and Innovation, Directorate General for Central Administration and Co-ordination, Federal Ministry of Justice, Austria
- M. Jean-Paul JEAN, Président du groupe de travail sur l'évaluation des systèmes judiciaires (CEPEJ-GT-EVAL), Avocat général près la Cour de Cassation de Paris, France

EUROPEAN COMMITTEE OF SOCIAL RIGHTS (ECSR) / *COMITÉ EUROPÉEN DES DROITS SOCIAUX (CEDS)*

- Mr Luis JIMENA QUESADA, President of the European Committee of social Rights, Spain
- Ms Karin LUKAS, Member of the European Committee of social Rights, Austria

JOINT COUNCIL ON YOUTH (CMJ) /CONSEIL MIXTE SUR LA JEUNESSE (CMJ)

- Ms Seija ASTALA, Chair of the Joint Council on Youth, Finland - apologised

SESSIONS I & II
MODERATORS - SPEAKERS / *MODERATEURS - ORATEURS*

Fireside chat / *Discussion informelle*

- Mr Martin KREUTNER, IACA Transition Team
- Mr Klaus MOOSMAYER, Chief Counsel Compliance of Siemens AG, Germany

Session I:

- Mr Roland MIKLAU, former Director General for Criminal Law, Federal Ministry of Justice, Austria, Moderator

- Ms Astri AAS-HANSEN, State Secretary, Ministry of Justice of Norway, Speaker 1
- Mr Ulrich WAGNER, Marburg University, Germany, Speaker 2
- Ms Paula MIRAGLIA, Director General, International Centre for the Prevention of Crime (ICPC), Canada, Speaker 3

Session II:

- Mr Hans WINKLER, Ambassador, Director of the Vienna Diplomatic Academy, Moderator

- Mr Peter GRIDLING, Director of the Federal Office for the Protection of the Constitution, Austria, Speaker 1
- Mr Hans-Peter STÜCKLER, Federal Ministry for the Interior, Austria, Speaker 2
- Mr Sebastian SPERBER, Programme Manager, European Forum for Urban Security, France, Speaker 3

INTERNATIONAL ORGANISATIONS / *ORGANISATIONS INTERNATIONALES*

EUROPEAN COMMISSION / *COMMISSION EUROPÉENNE*
- Mme Viviane REDING, Vice-présidente de la Commission européenne, Responsable de la justice, droits fondamentaux et citoyenneté, Bruxelles
- M. Michael SHOTTER, Conseiller juridique de la Vice-présidente de la Commission européenne, Bruxelles

EUROPEAN UNION / *UNION EUROPEENNE*
- Mr Albin DEARING, Programme Manager Research, Criminal Law and Criminal Justice, Freedoms and Justice Department, European Union Agency for Fundamental Rights, European Union in Vienna

EUROPEAN FUNDAMENTAL AGENCY FOR FUNDAMENTAL RIGHTS (FRA) / *AGENCE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE (FRA)*
- Mr Morten KJAERUM, Director

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR) / *HAUT COMMISSARIAT DES NATIONS UNIES AUX DROITS DE L'HOMME (HCDH)*
- Apologised - *Excusé*

ORGANISATION FOR SECURITY AND CO-OPERATION IN EUROPE (OSCE) / *ORGANISATION POUR LA SÉCURITÉ ET LA COOPÉRATION EN EUROPE (OSCE)*
- Mr Thomas WUCHTE, Head on Anti-terrorism Issues, Transnational Threats Department
- Mr Omer FISHER, Deputy Head, Human Rights Department, Office for Democratic Institutions and Human Rights (ODIHR)

UNITED NATIONS / *NATIONS UNIES*
- Apologised - *Excusé*

UNICEF
- Ms Kirsi MADI, Deputy Regional Director

UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC) / *OFFICE DES NATIONS UNIES CONTRE LA DROGUE ET LE CRIME (UNODC)*
- Mr Yury FEDOTOV, Executive Director of the United Nations Office on Drugs and Crime (UNODC), Director-General of the United Nations Office in Vienna (UNOV), Russian Federation
- Mr Teymuraz GOGOLASHVILI, Protocol OfficerMr Johannes DE HAAN, Crime Prevention and Criminal Justice Officer
- Ms Anna GIUDICE SAGET, Drug Control and Crime Prevention Officer
- Ms Alexandra SOUZA MARTINS, Drug Control and Crime Prevention Officer
- Ms Muki DANIEL JERNELÖV, Officer-in-Charge, Co-financing and Partnership Section, Public Affairs and Policy Support Branch, Division for Policy Analysis and Public Affairs
- Ms Valerie LEBAUX, Chief, Justice Section
- Ms Estela MARIS DEON, Crime Prevention and Criminal Justice Officer, Justice Section, Division for Operations, United Nations Office on Drugs and Crime

COUNCIL OF EUROPE / *CONSEIL DE L'EUROPE*

COMMITTEE OF MINISTERS / *COMITÉ DES MINISTRES*
- Mr Ermal DOBI, Deputy Minister of Justice of Albania, on behalf of the Chairman of the Committee of Ministers

PARLIAMENTARY ASSEMBLY / *ASSEMBLÉE PARLEMENTAIRE*
- Mr Christopher CHOPE, Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe
- Ms Agnieszka SZKLANNA, Secretary to the Committee on Legal Affairs and Human Rights

EUROPEAN COURT OF HUMAN RIGHTS / *COUR EUROPÉENNE DES DROITS DE L'HOMME*
- Mr Erik FRIBERGH, Registrar

COMMISSIONER FOR HUMAN RIGHTS / *COMMISSAIRE AUX DROITS DE L'HOMME*
- Mr Nils MUIŽNIEKS, Commissioner for Human Rights
- Ms Isil GACHET, Director of the Office of the Commissioner for Human Rights
- Mr Giancarlo CARDINALE, Deputy to the Director of the Office of the Commissioner for Human Rights

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES / *CONGRÈS DES POUVOIRS LOCAUX ET REGIONAUX*
- Mr Keith WHITMORE, President of the Congress of Local and Regional Authorities of the Council of Europe
- Ms Dolores RIOS TURON, Deputy Head of the Table Office and Protocol Division, Congress of Local and Regional Authorities of the Council of Europe

SECRETARIAT GENERAL OF THE COUNCIL OF EUROPE / *SECRÉTARIAT GÉNÉRAL DU CONSEIL DE L'EUROPE*
- Ms Gabriella BATTAINI-DRAGONI, Deputy Secretary General

CONFERENCE OF INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS (INGOS) / *CONFÉRENCE DES ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES (OING)*
- Apologised - *Excusé*

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DG I - HUMAN RIGHTS AND RULE OF LAW / *DG I – DROITS DE L'HOMME ET ÉTAT DE DROIT*
- Mr Philippe BOILLAT, Director General

Information Society and Action against Crime Directorate / *Direction de la Société de l'information et de la lutte contre la criminalité*
- Mr Ivan KOEDJIKOV, Head of the Action against Crime Department, Secretary to the Conference
- Mr Carlo CHIAROMONTE, Head of the Criminal Law Division, Action against Crime Department
- Ms Thea CHUBINIDZE, Assistant, Action against Crime Department
- Ms Dominique WULFRAN, Assistant, Action against Crime Department

Human Rights Directorate / *Direction des droits de l'Homme*
- Mr Régis BRILLAT, Executive Secretary of the European Committee of Social Rights, Head of the Department of the European Social Charter and Social Security Code (ESC)

Justice and Human Dignity Directorate / *Direction de la justice et de la dignité humaine*
- Mr Stéphane LEYENBERGER, Secretary to the European Commission for the Efficiency of Justice (CEPEJ), Head a.i. of the Division for the independence and efficiency of justice
- Ms Muriel DECOT, Co-Secretary to the European Commission for the Efficiency of Justice (CEPEJ), Secretary of the Consultative Council of European Judges (CCJE), Secretary of the Consultative Council of European Prosecutors (CCPE), Head of Unit of Committees for justice, Division for the independence and efficiency of justice

PRIVATE OFFICE OF THE SECRETARY GENERAL AND OF THE DEPUTY SECRETARY GENERAL / *CABINET DU SECRÉTAIRE GÉNÉRAL ET DE LA SECRÉTAIRE GÉNÉRALE ADJOINTE*

- Ms Leyla KAYACIK, Adviser, Private office

PROTOCOL / *PROTOCOLE*

- Ms Bridget O'LOUGHLIN, Head of Protocol
- Mme Isabelle FLECKSTEINER, Protocol Officer

DIRECTORATE OF LEGAL ADVICE AND PUBLIC INTERNATIONAL LAW / *DIRECTION DU CONSEIL JURIDIQUE ET DU DROIT INTERNATIONAL PUBLIC*

- Ms Elise CORNU, Legal Advisor
- Mme Isabelle KOENIG, Assistant

DIRECTORATE OF COMMUNICATION / *DIRECTION DE LA COMMUNICATION*

- Mr Daniel HÖLTGEN, Director of Communication and Spokesperson for the Secretary General and the Deputy Secretary General

DIRECTORATE OF PROGRAMME, FINANCE AND LINGUISTIC SERVICES / *DIRECTION DU PROGRAMME, DES FINANCES ET DES SERVICES LINGUISTIQUES*

- Ms Sally BAILEY-RAVET, Head of the Interpretation Department and Chief Interpreter

DIRECTORATE OF EXTERNAL RELATIONS / *DIRECTION DES RELATIONS EXTERIEURES*

- Mr Childerik SCHAAPVELD, Head of Council of Europe Office in Vienna

INTERPRETERS / *INTERPRÈTES*

- Mr Jan KROTKI
- Mr Jonathan POCOCK
- Ms Renate HORAK
- Mr Dominique LEVEILLE
- Mr Christian KODERHOLD
- Mr Alexander ZIGO
- Ms Manuela MOLINARI
- Ms Maria Noémi PLASTINO
- Mr Vladislav GLASUNOV
- Mr Grigory SHKALIKOV
- Ms Elisabeth SCHWARZ

Appendix III - Programme

WEDNESDAY 19 SEPTEMBER 2012

11.00-12.00	**Joint meeting of the Chairpersons of Council of Europe Committees and Mechanisms:** European Committee on Crime problems (CDPC), European Committee on Legal Co-operation (CDCJ), Steering Committee for Human Rights (CDDH), Steering Committee on Media and Information Society (CDMSI), European Committee for the Prevention of Torture (CPT), European Committee of Social Rights (ECSR), the European Commission for the Efficiency of Justice (CEPEJ) and the Joint Council on Youth (CMJ) *Rittersaal*
12.30	Buffet Lunch *Zeremoniensaal*
15.00-16.30	**Meeting of Senior Officials of the Ministries of Justice** *Festsaal*
16.30-16.50	Coffee break
16.50-18.00	Meeting of Senior Officials of the Ministries of Justice (continuation) *Festsaal*
19.00-19.30	Press Conference *Forum*

for Ministers of Justice only

19.30-22.30	Informal **"Fireside chat"** meeting co-hosted by Ms Beatrix KARL, Federal Minister of Justice of Austria and Ms Gabriella BATTAINI-DRAGONI, Deputy Secretary General of the Council of Europe, on the theme: "Corruption: the exclusive problem of others" **Dinner** offered by Ms Beatrix KARL, Federal Minister of Justice of Austria, followed by a guided tour of the museum *Kunsthistorisches Museum*
20.00-22.30	Welcome buffet dinner offered by Ms Beatrix KARL, Federal Minister of Justice of Austria, for all other participants *Ministry of Justice*

THURSDAY 20 SEPTEMBER 2012

9.00-10.30	**Opening session: Responses of justice to urban violence** *Festsaal*
9.00	Opening of the Conference by Ms Gabriella BATTAINI-DRAGONI, Deputy Secretary General of the Council of Europe
9.02	Welcome address by Ms Beatrix KARL, Federal Minister of Justice of Austria
9.17	Address by Mr Ermal DOBI, Deputy Minister of Justice of Albania, on behalf of the

Albanian Chairmanship of the Committee of Ministers of the Council of Europe

9.25 Address by Mr Christopher CHOPE, Chairperson of the Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe

9.33 Address by Mr Keith WHITMORE, President of the Congress of Local and Regional Authorities of the Council of Europe

9.41 Address by Mr Nils MUIŽNIEKS, Council of Europe Commissioner for Human Rights

9.49 Address by Mr Yury FEDOTOV, Executive Director of the United Nations Office on Drugs and Crime, Director-General of the United Nations Office in Vienna

9.57 Family photo (for Heads of delegation)
Festsaal

10.15 Election of the Chairperson and the two Vice-Chairpersons

10.20 Address by Ms Gabriella BATTAINI-DRAGONI, Deputy Secretary General of the Council of Europe

10.30-11.00 Coffee break

11.00-13.00 **Session I: "Juveniles as perpetrators and victims"**
moderated by Dr Roland MIKLAU, former Director General for Criminal Law in the Federal Ministry of Justice, Austria
Introduction:
Ms Astri AAS-HANSEN, State Secretary in the Ministry of Justice, Norway;
Mr Ulrich WAGNER, Marburg University, Germany;
Ms Paula MIRAGLIA, Director General, International Centre for the Prevention of Crime, Canada
Festsaal

13.00
- Luncheon hosted by Mr Philippe BOILLAT, Director General, Directorate General Human Rights and Rule of Law, Council of Europe, on behalf of Mr Thorbjørn JAGLAND, Secretary General of the Council of Europe, for Ministers and Heads of Delegations
Hofburg Galerie

- Buffet lunch offered by the host country to other participants
Zeremoniensaal

15.00-16.00 Session I (continuation)
Festsaal

On the occasion of the Conference: Presentation of the CEPEJ report "Evaluation of European Judicial Systems 2012"
Forum

16.00-16.40 Ceremony of signatures or ratifications of Treaties
Rittersaal

Coffee break

16.40-18.00 **Session II: "Organised groups and their new ways of communicating"**
moderated by Ambassador Dr Hans WINKLER, Director of the Vienna Diplomatic

Academy, former State Secretary in the Federal Ministry of Foreign Affairs of Austria
Introduction:
Mr Peter GRIDLING, Director of the Federal Office for the Protection of the Constitution, Austria;
Mr Herwig LENZ, Head of the Sub-Department Crime Prevention and Victim Support, Federal Criminal Police Office, Austria;
Mr Sebastian SPERBER, Programme Manager, European Forum for Urban Security, France
Festsaal

20.00-22.30 Dinner offered by Ms Beatrix KARL, Federal Minister of Justice of Austria, for participants and accompanying persons
Museum of Ethnology

FRIDAY 21 SEPTEMBER 2012

9.00-10.00 Session II (continuation)
Festsaal

10.00-10.30 Coffee break

10.30-11.00 **Closing session: Presentation and discussion of the results of Session I and Session II**
Festsaal

11.00-11.10 Adoption of the resolution

11.10-11.20 Address by Mr Philippe BOILLAT, Director General, Directorate General Human Rights and Rule of Law, Council of Europe

11.20-11.30 Closing remarks by Ms Beatrix KARL, Federal Minister of Justice of Austria

11.30-12.00 Press conference
Forum

12.00-14.00 Lunch offered by the host country
Zeremoniensaal

APPENDIX VII

1155th meeting – 21 November 2012

Appendix 9
(Item 11.1, Part 1)

Terms of reference of the Ad hoc Drafting Group on Dangerous Offenders (PC-GR-DD)

Name of Committee: Ad hoc Drafting Group on Dangerous Offenders (PC-GR-DD)

Category: Subordinate to the CDPC

Set up by the Committee of Ministers under Article 17 of the Statute of the Council of Europe and in accordance with Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods

Duration: **21 November 2012 - 31 December 2013**

Main tasks

Under the authority of the European Committee on Crime Problems (CDPC), the PC-GR-DD shall prepare a non-binding legal instrument on dangerous offenders.

The PC-GR-DD shall, in particular, examine the following issues:

- risk and threat assessment of dangerous offenders in criminal proceedings which could result in detention due to the danger posed by the offenders;

- treatment and conditions of detention of dangerous offenders;

- measures for the prevention of re-offending by dangerous offenders to the extent that such measures are covered by the criminal justice system.

The PC-GR-DD shall limit its work to offenders deemed to represent a threat to society, notably because of their personality, the violent character of the criminal offence(s) which they have committed, and the risk of re-offending.

Other issues related to dangerous offenders, in particular with regard to offenders whose dangerousness is determined by their involvement in organised crime and/or terrorism, should not be examined as a matter of priority by PC-GR-DD, but shall be the subject of future work by the CDPC.

In its work, the PC-GR-DD should take into account the relevant jurisprudence of the European Court of Human Rights and best practices of member States. The experts may also consult the report by Professor Nicola Padfield entitled “Sentencing, management and treatment of “dangerous” offenders” commissioned by the CDPC.

Pillar / Sector / Programme

Pillar: Rule of law
Sector: Common standards and policies
Programme: Development and implementation of common standards and policies

Expected results

Drafting of a non-binding legal instrument concerning dangerous offenders.

Composition

Members:

The Ad hoc Drafting Group shall be composed of 16 representatives of member States of the highest possible rank in the field of criminal law and treatment of dangerous offenders, designated by the CDPC, and 1 scientific expert with established experience in the same field, appointed by the Secretary General.

The composition of the Ad hoc Drafting Group will reflect an equitable geographic distribution amongst the member States and will take account of the gender equality dimension.

The Council of Europe will bear the travel and subsistence expenses of each member.

The scientific expert shall not have the right to vote.

Other member States may designate representatives without defrayal of expenses.

Participants:

Without prejudice to the provisions of Section III.B.a. of Resolution CM/Res(2011)24, the following may send representatives, without the right to vote and at the charge of their corresponding administrative budgets:

- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);
- Council for Penological Co-operation (PC-CP).

The following may send representatives, without the right to vote and without defrayal of expenses:

- European Union;
- States with observer status with the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America);
- United Nations Office for Drugs and Crime (UNODC).

Observers:

The following may send representatives, without the right to vote and without defrayal of expenses:

- relevant international organisations;
- representatives of civil society, professional and academic communities.

Working methods

The PC-GR-DD shall report to the Bureau of the CDPC on a regular basis. The Bureau of the CDPC may issue instructions to the PC-GR-DD with regard to its work.

The rules of procedure of the Ad hoc Drafting Group are governed by Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

APPENDIX VIII

20 November 2012

17th Conference of Directors of Prison Administration
with the participation of
Directors of Probation Services
"Foreign Prisoners"

22 - 24 November 2012
Rome

PROGRAMME

Wednesday, 21 November

18.00 - 19.00 **Registration** of participants, Hotel Domus Mariae Palazzo Carpegna & Crowne Plaza Rome

Thursday, 22 November

08.00 - 09.00 **Registration** of participants (continuation), Hotel Domus Mariae Palazzo Carpegna & Crowne Plaza Rome

12.00 - 13.00 **Audience** with His Holiness The Pope Benedict XVI, Vatican

13.30 - 14.45 Lunch at the Caffarelli Terrace

Venue: Protomoteca of Campidoglio

15.15 – 18.00 **Opening Session**

Chair: Mr Eugenio SELVAGGI, Head of Department of Justice Affairs, Ministry of Justice, Italy

- Opening speech by Ms Paola SEVERINO, Minister of Justice of Italy

- Opening speech by Ms Gabriella BATTAINI-DRAGONI, Deputy Secretary General of the Council of Europe

- Welcome address by President Giovanni TAMBURINO, Head of Department of Penitentiary Administration, Italy

- Welcome address by Mr Gianni ALEMANNO, Mayor of Rome

16.15 – 16.30 Coffee break

- Keynote introductory speech by Mr Guido RAIMONDI, Vice President of the European Court of Human Rights

- Speech by Mr Latif HÜSEYNOV, President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

- Mr Paulo César BARAJAS GARCÍA, Official, Pontifical Council of Justice and Peace, Holy See, Vatican City

- Setting the scene for the workshops, by Mr André VALLOTTON, Chair of the Council for Penological Co-operation (PC-CP)

18.00 Visit to the Capitolini Museum

20.45 Dinner, Ministry of Foreign Affairs Club

Friday, 23 November

Venue: Prison Administration Training College

09.00 - 12.00 **Workshop I:** Admission, allocation and regime of foreign prisoners

Chair: Ms Simonetta MATONE, First Deputy Head, Department of Penitentiary Administration, Ministry of Justice, Italy

- Mr William RENTZMANN, Director General, Department of Prisons and Probation, Ministry of Justice, Denmark

- Mr Esa VESTERBACKA, Director General, Criminal Sanction Agency (Prison and Probation Service), Finland

10.30 – 10.45 Coffee break

- Mr Graham WILKINSON, Head, Foreign National Offender Policy, Offender Safety, Rights & Responsibilities Group, Ministry of Justice, United Kingdom

- Ms Femke HOFSTEE-VAN DER MEULEN, Inspector at the Inspectorate of Security and Justice, The Netherlands

12.00 - 14.00 Lunch

14.00 - 17.00 **Workshop II:** Preparation for release and social reintegration of foreign prisoners

Chair: Mr Jörg JESSE, Germany

- Ms Nicolet FABER, Head of the Foreign Desk, Probation Service, The Netherlands

- Mr Francesco OTTAVIANO, Director of the Office for Studies, Research, Legislation and International Relations, Department of Penitentiary Administration, Ministry of Justice, Italy

- Ms Tinka VELDHUIS, International Centre for Counter-Terrorism (ICCT)

- Mr Gerhard PLOEG, Senior Adviser, Department of Corrections, Ministry of Justice and Public Security, Norway

- Ms Pauline CROWE, Chief Executive, Prisoners Abroad

16.45 – 17.00 Coffee break

17.00 - 19.00 **Closing session**

Chair: Mr Philippe BOILLAT, Director General, Directorate General Human Rights and Rule of Law, Council of Europe

- Conclusions of the Conference

- Closing address by Mr Philippe BOILLAT, Director General, Directorate General Human Rights and Rule of Law, Council of Europe

20.30 Gala dinner, Villa Miani

Saturday, 24 November

Venue: Prison administration training college

09.00 – 12.00 **Meeting between the CDAP participants and European judges and prosecutors to discuss prison overcrowding and ways of reducing prison inflation**

Chair: Mr Lorenzo SALAZAR, Magistrate, Director of the Office for Legislative and International Affairs, Department of Justice Affairs, Ministry of Justice, President of the European Committee on Crime Problems (CDPC), Italy

- Mr Mauro PALMA, Vice Chair of the PC-CP

- Ms Natalia DELGRANDE, Senior Researcher, School of Criminal studies, University of Lausanne, Switzerland

10.30 – 10.45 Coffee break

- Mr Kauko AROMAA, Former Director of the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), Finland

- Mr Alfonso SABELLA, Magistrate, Director General for Goods and Services, Department of Penitentiary Administration, Italy

12.30 Lunch

Conference website
http://www.coe.int/t/dghl/standardsetting/prisons/conference_17_EN.asp

APPENDIX IX

23/11/2012

17th Conference of Directors of Prison Administration
with the participation of
Directors of Probation Services
"Foreign Prisoners"

Rome, 22-24 /11/2012

CONCLUSIONS

The participants in the 17th Council of Europe Conference of Directors of Prison Administration with the participation of Directors of Probation Services "Foreign Prisoners" (Rome, 22-24 November 2012):

Endorsing Committee of Ministers' Recommendation (2012) 12 concerning foreign prisoners and the principles contained in it;

Drawing the attention of the national authorities to the increasing numbers of foreign suspects and offenders detained in the prisons of many European states;

Underlining the difficulties this situation creates for the prison administration in terms of management, treatment and preparation for release of these prisoners and also in terms of quality of intervention and treatment of the rest of the prison population under their responsibility;

Underlining the related difficulties faced by the probation services in reintegrating such prisoners after their release;

Mindful of the specific problems these persons often encounter while detained abroad due to differences in language, culture, customs or religion, as well as due to disrupted family relations and contacts with the outside world;

Recalling that in accordance with the European Convention on Human Rights, states have an obligation to treat all prisoners, independent of their origin or nationality, with due respect for their fundamental rights and with regard for their particular situation and individual needs:

- **draw the attention of** the Ministries of Justice to the need to devote efforts and to contribute to developing national penal policies and practices allowing foreign offenders to be dealt with in an efficient, proportionate and humane way, including by providing sufficient staffing and training of professionals working with such offenders;

- **agree to take the necessary measures** in order to provide foreign prisoners, upon admission to prison, with information, in a language they understand, on their rights and duties, on the internal prison regulations, as well as regarding possibilities for transfer, legal advice and assistance;

- **undertake** to facilitate, as far as practicable, family relations and contacts of foreign prisoners with the outside world;

- **undertake** to endeavor to improve preparation for release and social reintegration of foreign prisoners by maintaining contacts with all relevant agencies working with such prisoners, including, as necessary, in their country of origin; in doing so, they will take into account the important contribution made by civil society and the NGOs;

- **invite the Council of Europe, notably through the European Committee on Crime Problems (CDPC),** to assist its member states in exchanging and promoting best practices regarding dealing with foreign offenders.

APPENDIX X

24/11/2012

17th Conference of Directors of Prison Administration
with the participation of
Directors of Probation Services
"Foreign Prisoners"

Rome, 22-24 /11/2012

CONCLUSIONS
of the meeting of representatives of European prison and probation services, judges, prosecutors and experts in the penitentiary field, dedicated to prison overcrowding

The participants in the meeting of representatives of European prison and probation services, judges, prosecutors and experts in the penitentiary field *(Rome, 24 November 2012):*

Endorsing Committee of Ministers' Recommendation n° R(92)17 concerning consistency in sentencing, Recommendation n° R(99)22 concerning prison overcrowding and prison population inflation, Recommendation Rec(2003)22 concerning conditional release and Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;

Underlining that sentencing policies have a major impact on prison population flux and turnover and that therefore prison overcrowding cannot be successfully combatted without revisiting sentencing and release practices;

Reiterating in this respect that consistency in sentencing should not result in harsher penal sanctions and that imprisonment should be used as a last resort and measures should be taken to avoid recourse to pre-trial detention as far as possible;

Recalling the recommended introduction of legislative restrictions to the use of custodial sentences for frequently committed less serious offences and of indications for grading the array of non-custodial sanctions and measures to be used as reference sanctions for certain offences;

Stressing that the extension of the prison estate should not be used as the only method for combatting prison overcrowding;

Underlining that measures should be taken to reduce the length of prison sentences and the time actually spent in prison by the increased use of early and conditional release (parole);

Underlining further the need for efficient supervision and aftercare measures which allow for the properly prepared return of prisoners to free life in society and for the ensuing reduction of recidivism rates;

Being aware that restorative justice methods and work with the offenders, the victims and the families can be an efficient way of dealing with crime and its effects without recourse to imprisonment;

Welcoming the recent adoption of Recommendation (2012)12 concerning foreign prisoners and being aware of the fact that, once duly implemented, it can have a positive effect on reducing the number of foreign prisoners and thus contribute to tackling the problem of prison overcrowding;

Agree that the following measures could be taken in order to combat effectively prison overcrowding and to better reintegrate offenders:

- **Member states should provide for** the use of custodial sanctions only as a last resort in case of persons who have committed serious offences and who cannot be dealt with safely and efficiently by other measures and should make more use of the system of community sanctions and measures;
- **Prosecutors and judges** in fulfilling their functions should consider all the possibilities for limiting the use of pre-trial detention to the strict minimum and for keeping the time spent in pre-trial detention as short as possible;
- **The prison authorities** should set maximum capacity for each prison establishment taking into account the relevant Council of Europe standards and should take all necessary measures to respect it;
- **The Council of Europe** should help the national authorities in maintaining a successful dialogue and co-operation between judges, prosecutors, prison and probation services and in involving them in defining and planning penal policies and strategies in order to combat prison overcrowding and prison population inflation, including by holding similar joint meetings on a regular basis;
- **The Council of Europe should assist, notably through the European Committee on Crime Problems (CDPC)**, its member states in developing at a European level of:
  (a) coherent criteria regarding the calculation of time spent in custody abroad, including custody before trial, in order to reduce, where possible, the remainder of custodial sentences to be served;

(b) penal policies which include decriminalization of certain types of less serious offences; reclassification of the list of offences punishable by imprisonment; diversion from the formal criminal procedure; victim-offender mediation and other restorative justice interventions; early release; increased use of community sanctions and measures and the tangible reduction in the use of imprisonment.

APPENDIX XI

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 16 October 2012
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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Cooperation
(PCCP)

SCOPE AND DEFINITIONS

ELECTRONIC MONITORING

Document prepared by

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Scope

The present document is intended to propose a set of professional and ethical rules and standards enabling national authorities to provide just, proportionate and effective use of different forms of electronic monitoring in the framework of the criminal justice process in full respect of the rights of the persons concerned.

This document is also intended to bring to the attention of national authorities that particular care needs to be taken when using electronic monitoring not to undermine or substitute the building of constructive professional relationships with suspects and offenders by competent staff dealing with them. It should be underlined that the imposition of technological control can be a useful addition to existing socially and psychologically positive ways of dealing with any suspect or offender.

Definitions

Electronic monitoring is a general term referring to forms of surveillance with which to monitor the location, movement and specific behaviour of persons in the framework of the criminal justice process. The current forms of electronic monitoring are radio wave, biometric or satellite tracking. They usually comprise a device attached to a person and monitored remotely (for more details refer to the appendix).

Depending on the national jurisdictions electronic monitoring may be used in one or more of the following ways:

- during the pre-trial phase of criminal proceedings[31];
- as a condition for suspending or of executing a prison sentence;
- as a stand-alone means of execution of a criminal sanction or measure[32];
- in combination with other probation interventions;
- as a pre-release measure[33];
- in the framework of conditional release from prison;
- as an intensive guidance and supervision measure for certain types of offenders after release from prison
- as a means of monitoring the internal movements of imprisoned offenders and/or the perimeters of open prisons[34].

Where electronic monitoring is used as a modality of execution of a prison sentence, in some jurisdictions those under electronic monitoring are considered as prisoners.

In some jurisdictions it is managed by the prison, probation or police services or other competent public agency while in others it is implemented by private companies under a service-providing contract with a state agency.

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[31] As a bail condition, substitution for or a modality of pre-trial custody

[32] Without being combined with other interventions or treatment measures

[33] For example prison leave, work outside prison, meetings with social or probation services, etc.

[34] This document is not dealing with the intramural use of EM

In some jurisdictions the suspect or offender carrying the device is contributing to the costs for its use, in others it is exclusively the state which covers the costs of electronic monitoring[35].

Electronic monitoring, when properly and proportionately planned and carried out, can help:

a) keeping in and returning suspects and offenders to society and increasing their compliance with specified conditions;
b) contributing to their longer term desistance from crime, and
c) reducing the number of inmates

"Agency providing electronic monitoring equipment": usually[36] a private company which produces, markets, sells and maintains such equipment.

"Agency responsible for supervising persons under electronic monitoring": a public agency or private company which supervises the location, movement or specific behaviour of a suspect or an offender for a specified period of time.

"Probation agency": a body responsible for the execution in the community of sanctions and measures defined by law and imposed on an offender. Its tasks include a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety. It may also, depending on the national legal system, implement one or more of the following functions: providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime.

A probation agency may also be, depending on the national legal system, the "agency responsible for supervising persons under electronic monitoring".

Aspects regarding the use of EM to be considered:

- Types, maximum duration and modalities of execution of electronic monitoring in the framework of the criminal justice shall be specified in law.

- Decisions to impose or revoke electronic monitoring shall be taken by the judiciary or allow for a judicial review[37].

- Where electronic monitoring is used at the pre-trial phase as an alternative to remand in custody special care needs to be taken not to net-widen its use to offences for which no remand in custody is provided by law.

- The type and modalities of electronic monitoring shall be proportionate in terms of duration and intrusiveness to the seriousness of the offence alleged or committed, shall take into account the individual circumstances and shall be regularly reviewed.

[35] Rec(92)16, Rule 69 states: "In principle, the costs of implementation shall not be borne by the offender".

[36] In the Russian Federation this is a state company attached to the Federal Service for Execution of Punishments

[37] In most European countries EM is combined with other probation sanctions or measures which are imposed by the judiciary

- Electronic monitoring is not to be executed in a manner restricting the concerned person's fundamental rights and freedoms to a greater extent than provided for by the decision imposing it. The size of any imposed exclusion zones, and the duration of exclusion from public space is particularly important in this respect.

- The imposition of electronic monitoring should take account of its impact on the interests of third parties in the place of residence to which the suspect or offender is restricted.

- There shall be no discrimination in the imposition or execution of electronic monitoring on the grounds of gender, race, color, nationality, language, religion, sexual orientation, political or other opinion, national or social origin, property, association with a national minority or physical or mental condition.

- While electronic monitoring can ensure supervision and thus reduce crime over the period of its execution, if longer term desistance from crime is sought, it should always be combined with other professional interventions aimed at the social reintegration of offenders.

- Where private sector organisations are involved in the implementation of decisions imposing electronic monitoring the responsibility for the effective treatment of the persons concerned in conformity with the highest international ethical and professional standards should remain with public authorities.

- Public authorities should ensure that all relevant information regarding the private sector involvement in the delivering of electronic monitoring should be transparent and publicly accessible.

- The handling and shared availability of data collected in relation to the use of electronic monitoring should be specifically regulated by law and effective sanctions against its misuse should be introduced.

- Staff responsible for the implementation of decisions related to electronic monitoring shall be sufficiently numerous and adequately trained to carry out their duties professionally. This training shall include data protection issues.

Appendix 1

Types of Electronic Monitoring

Different EM technologies have different practical and ethical implications for the supervision of offenders. For example satellite tracking is not in fact a single system. It has a number of capacities, types of use and permutations, some of which might be regarded as less ethically acceptable than others. Data protection issues can also arise in relation to the use of modern EM technologies. New technologies are continuing to emerge and are constantly improving and the ethical implications should be considered in advance as far as possible.

Radio frequency (rf) electronic monitoring entails the wearing of an ankle bracelet (or tag), the signal from which can be picked up by a transceiver installed in the offender's home. So long as s/he remains in proximity to the transceiver his or her presence in the home will be registered in the monitoring center, via either the landline or mobile telephone system. Radio frequency technology can be used to monitor house arrest or nighttime curfews. Most straps are made of toughened plastic with optic fibres running through them, and cease to work if this fibre is cut. Straps can be made of leather with steel bands running through them: these can only be cut with powerful bolt cutters and are much harder for a wearer to remove. Wrist tags are available where health considerations are require using these instead of ankle tags. Worldwide, radio frequency technology has been understood as the "first generation" of electronic monitoring, and is still the commonest form of it: the technology has been constantly upgraded to improve performance, reliability and ease of use. Internationally, however, a professional/commercial debate has begun which suggests that this "first generation" technology should be supplemented and perhaps superceded by more versatile "second generation" technology (satellite tracking), and in the past five years at least two countries adopted this without ever having used "first generation" technology.

Satellite tracking - combined with mobile phone location technology - monitors the location or movement of a person on the earth's surface, outdoors and indoors, but not necessarily underground. It entails the wearing of an ankle bracelet (sometimes accompanied by a belt-worn computer) which can both pick up and triangulate signals from orbiting satellites (currently the American Global Positioning System (GPS)) and cellphone towers, and transmit/upload an offender's location through the mobile phone system to a monitoring center. It can do this in "real-time", so that an offender's whereabouts are always known immediately to the monitoring center, or retrospectively, in which a record of an offender's movements is compiled (and analysed) some hours later. Some systems combine both immediate and retrospective monitoring, and some have in-built texting facilities for giving instructions to the offender. A person being satellite tracked is required to spend part of the day recharging the battery which powers the equipment s/he wears or carries. In case of a one-piece tracking tag the person has in the past been required to remain attached to the plug-in system for recharging, but technology is emerging which can charge the tag from a short distance away. Tracking technology can be used to monitor house arrest (by creating small "inclusion zones"), to follow all of a person's movements and to create exclusion zones (areas of past offending, neighborhoods of former victims) which the offender is forbidden to enter. Satellite tracking technology can also be used as part of a victim protection scheme which requires a victim to carry a device which warns her/him of the offender's proximity. Some satellite tracking systems can be combined with mapping software which shows the location of recent crime scenes, making it possible to see if the offender was in the vicinity of the crime at the time. This can be presented to the offender as a tangible means of demonstrating that s/he is desisting from crime, and the data may be used in legal proceedings incriminating or exonerating him/her. The cost of satellite tracking has been steadily decreasing, making it more attractive to penal and judicial authorities than it has been in the past. The availability of other satellite systems apart for the American one may make offender tracking even more feasible in the future, and rival systems of terrestrial tracking may be customised for the same purpose.

Voice verification is a form of electronic monitoring which uses a person's unique biometric voiceprint, recorded at the point of conviction. Each time the monitoring center phones the offender his or her voice is matched to the voiceprint stored on the computer, while the location of the phone being used by the offender is simultaneously registered. Voice verification can be used to monitor the presence of a person at a single location, or to track his or her movements between a number of specified locations, e.g. a community service placement, or a jobcentre. Because it does not entail the use of a wearable device there is no risk of stigma or

of using the tag as a trophy and for this reason some experts believe that this makes voice verification a more acceptable form of EM for juveniles and young offenders.

Remote Alcohol Monitoring (RAM) exists in two forms. The first links a breathalyser to radio frequency electronic monitoring - specifically to the transceiver - in the offender's home. The offender is randomly phoned by the monitoring center and asked to use breathalsyer, whose result can immediately be transmitted by landline. The offender using the breathalyser is identified either by voice verification technology, or by photograph, or by (biometric) facial recognition technology.

The second form of RAM is mobile, and does not require the offender to be in a single location. It entails the offender wearing an ankle bracelet which picks up the presence of alcohol in the offenders system "transdermally" - through his/her skin - and periodically uploads that data to the monitoring center via the mobile phone system. RAM can be used with offenders whose crimes have been alcohol-related, where the court has either forbidden them to use alcohol over the period of supervision, or required supervisors to help offenders reduce its intake. Some offenders value the technology because it helps them to self-manage their intake of alcohol.

Kiosk reporting is a form of electronic monitoring installed at the office of the probation agency and ostensibly designed to help probation officers manage large caseloads, focused specifically on low-risk offenders at some point in the supervision process, although not (at present) all of it. When offenders report to a probation office, instead of meeting a real probation officer face-to-face, they are required to interact with a kiosk-based computer (similar to a cashpoint machine). The machine requires them to answer certain questions about their recent activities, and may contain instructions from their probation officer. The offender identifies him or herself to the machine – undergoes verification that it is him/her who is reporting and not a substitute - by means of a fingerprint, although a voiceprint could also be used.

It is clear from the above that different types of surveillance technology are now being combined in EM, for example biometrics and location monitoring and while we intend to explore the ethical implications of these for offenders our comments on biometrics in general will not be exhaustive.

A Note on Commercial Organisations Involved in Electronic Monitoring.

There are essentially two kinds of private company involved in the delivery of electronic monitoring. Firstly, technology manufacturers (who produce equipment - hardware and software - train public sector staff to install it, provide technical support services and manage monitoring centers). Secondly, full service providers (who employ field and center-based monitoring officers, install equipment, manage monitoring centers and may sometimes be involved in the legal aspects of revocation, supplying technical evidence of non-compliance in respect of offenders who are not on any other kind of supervision apart from EM). All countries require some degree of partnership between their electronic monitoring providers and national telecommunication companies (e.g. in terms of access to landline and cellphone networks), and in some countries these companies may be contracted to provide monitoring services themselves, buying or renting equipment from technology manufacturers and working in conjunction with state agencies. There is a sense in which the effective operation of EM is dependent on, and constrained by the technical quality and administrative efficiency of existing telecommunication infrastructures. Some of the larger global corporations involved in full service provision may also manufacture their own technology. These larger companies may also be involved in wider security and surveillance activities (guarding and CCTV management), in the provision of private prisons, in the provision of back-office functions for police forces and a range of what have hitherto been understood as statutory probation services - hostel accommodation and community service. Both technology manufacturers and service providers may also be involved in the provision of electronic monitoring in the telecare and telehealth fields (monitoring the locations and "life signs" of old people, or people with dementia): research and technical development in electronic monitoring overlaps in the health and criminal justice fields.

APPENDIX XII

1145th meeting – 13 June 2012

Item 8.1

12th Council of Europe Conference of Ministers responsible for Sport (Belgrade, 15 March 2012) – Report by the Secretary General
(CM(2012)66)

Decisions

The Deputies

1. took note of the resolutions below adopted by the 12th Council of Europe Conference of Ministers responsible for Sport (Belgrade, Serbia, 15 March 2012) (cf. document CM(2012)66, Appendix 3):

- Resolution No. 1 on international co-operation on promotion of the integrity of sport against the manipulation of results (match-fixing);
- Resolution No. 2 on current issues in pan-European sport co-operation and in particular:
  - 2.1 on co-operation between the Council of Europe and the European Union
  - 2.2 on strengthening the monitoring capacities of the Convention on Spectator Violence;

2. agreed to bring them to the attention of their governments and to transmit them to the States Parties to the European Cultural Convention as well as to the member States of the Enlarged Partial Agreement on Sport (EPAS);

3. invited the EPAS Governing Board, where appropriate, in co-operation with the Group of States against Corruption (GRECO), the European Committee on Crime Problems (CDPC), Moneyval and other relevant bodies, and in co-ordination with the European Union, to launch the negotiation of a possible Council of Europe Convention against manipulation of sports results and notably match-fixing. EPAS shall report on the process to the Committee of Ministers for consultation as soon as possible. EPAS shall submit the completed draft instrument, that may eventually be finalised as a convention or as another instrument, to the Committee of Ministers;

4. invited the European Committee on Crime Problems (CDPC), in co-operation with the Group of States against Corruption (GRECO) and EPAS to consider the feasibility of an additional protocol to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173), which could expand the scope of application of its provisions to the private non-profit sector, notably sport;

5. instructed the Secretariat to forward the above-mentioned resolutions to the competent Council of Europe bodies for information and so that they could take them into account in their work; invited the Standing Committee of the Spectator Violence Convention in particular to undertake a critical review of the Convention, prior to taking other steps mentioned in Resolution 2.2;

6. instructed the Secretariat to forward the above-mentioned resolutions to the European Union for information, and in particular Resolution No. 2, section 2.1 – Co-operation between the Council of Europe and the European Union;

7. taking into account decisions 1 to 6 above, took note of the Secretary General's report on the 12th Council of Europe Conference of Ministers responsible for Sport, as it appears in document CM(2012)66, as a whole.

Enlarged Partial Agreement on Sport
epas
Accord Partiel Élargi sur le Sport

APPENDIX XIII

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 4 September 2012 EPAS (2012) 27rev

Enlarged Partial Agreement on Sport (EPAS)

PRELIMINARY DRAFT CONVENTION

AGAINST MANIPULATION OF SPORTS RESULTS

Preamble

The member States of the Council of Europe and the other States signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recognising the value of fostering co-operation with the other States signatories to this Convention;

Bearing in mind the Committee of Ministers' Declaration on compliance with the commitments made by member States of the Council of Europe (Strasbourg, 10 November 2004);

Considering that it is necessary to further develop a common global and European framework for the development of sport, based on the notions of pluralist democracy, rule of law, human rights and ethical principles;

Considering the conclusions of the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), which recommended the continuation of Council of Europe activities which serve as references in the field of sport;

Having regard to its Recommendations (92) 13Rev on the European Sports Charter; (2010)9 on the revised Code of Sports Ethics; (2005) 8 on the Principles of Good Governance in Sport and (2011) 10 on Promotion of the integrity of sports against manipulation of results, notably match-fixing;

In the light of the work and conclusions of the 11th Council of Europe Conference of Ministers responsible for Sport, held in Athens on 11 and 12 December 2008, in particular in the areas of match-fixing, corruption and illegal betting;

In the light of Resolution No. 1 of the 18th Council of Europe Informal Conference of Ministers responsible for Sport, held in Baku on 22 September 2010, on the Promotion of integrity of sports against the manipulation of sports results (match-fixing);

In the light of the work and conclusions of the 12th Council of Europe Conference of Ministers responsible for Sport, held in Belgrade on 15 March 2012, particular on drafting a new international legal instrument against manipulation of sports results;

Acknowledging that, as a rule, the sports movement is responsible for sport but that public authorities are invited, where appropriate, to develop mutual cooperation with the sports movements, in order to promote the values and benefits of sport;

Reaffirming that the nature of sport itself, based on fair-play and equal competition, requires that unethical practices and behaviours in sport be forcefully and effectively countered;

Aware of the pressures which modern society, marked among other things by the race for success and economic profits, brings to bear on sport;

Stressing their belief that the consistent application of the principles of good governance and ethics in sport would be a significant factor in helping to eradicate corruption, manipulation of sports results (match fixing) and other malpractices in sport;

Acknowledging that attempts to manipulate sports results constitute an important threat for the integrity of sport;

Expressing concerns on the involvement of organised crime in the manipulation of sports results, especially at international level;

Convinced that dialogue and cooperation among public authorities, sports organisations and betting operators, at national and international level, based on mutual respect and trust is essential in seeking effective common responses to challenges posed by the problem of manipulation of sports results;

Acknowledging the spontaneous efforts of and results already achieved by some international sports organisations, i.e. the International Olympic Committee, UEFA and SportAccord, in the fight against manipulation of sports results;

Believing that an effective fight against manipulation of sports results requires increased, rapid, sustainable and well-functioning national and international co-operation;

Have agreed as follows:

Chapter I – Purpose, guiding principles, definitions

Article 1 – Purpose and scope

Each Party shall provide, in its internal law, for the most appropriate and effective legal and administrative means against manipulation of sports results and ensure conditions for effective and sustainable co-operation of public authorities, sports organisations, betting operators and other stakeholders, as appropriate, at national and international level in the fight against manipulation of sports results.

Article 2 – Guiding principles

Activities of and cooperation between public authorities, sports organisations, betting operators and other stakeholders, as appropriate, at national and international level in the fight against manipulation of sports results shall always ensure full respect for the following principles:

a) protection of human rights

b) legality

c) integrity

d) independence and autonomy of sport organisations and betting operators

e) protection of sports ethics.

Article 3 – Data protection

Each Party shall adopt such legislative and other measures as may be necessary to ensure that all measures against manipulation of sports results comply with relevant international data protection standards, particularly in the exchange of information between stakeholders.

Article 4 – Definitions

For the purposes of this Convention:

a) “manipulation of sports results” shall mean an arrangement on an irregular alteration of the course or the result of a sporting competition or any of its particular events (e.g. matches, races…) in order to obtain advantage for oneself or for others and remove all or part of the uncertainty normally associated with the results or the running of a competition;

b) “sports betting” shall mean all sports betting-based games that involve wagering a stake with a monetary value in games in which participants may win, in full or in part, a monetary prize based, totally or partially, on chance or uncertainty of outcome. In particular:

   a. «legal betting» shall mean all types of betting that are allowed on a specific territory or jurisdiction (e.g. by licence given by a regulator or recognition of licences given by the regulator of a third country);

   b. «illegal betting» shall mean all types of betting that are not allowed on a specific territory or jurisdiction;

   c. «irregular betting» shall mean all types of betting where irregularities and abnormalities in the bets placed or the event upon which the bets are placed can be identified;

c) “athletes” shall be understood as sportsmen and sportswomen participating in organised sports activities, their support personnel and sports officials as well as anyone taking part in the activities of sports organisations in any role, including the owners of sports organisations;

d) “insider Information” shall be understood as any information relating to any competition or event that a person possesses by virtue of his/her position towards athletes. Such information includes, but is not limited to, factual information regarding the competitors, the conditions, tactical considerations or any other aspect of the competition or event but does not include such information that is already published or a matter of public record, readily acquired by an interested member of the public, or disclosed according to the rules and regulations governing the relevant competition or event ;

e) «public authorities» shall be understood as authorities of Parties having responsibility for law enforcement, personal data protection, sport, sports betting and any other public authorities, as appropriate.

Chapter II – Prevention, co-operation and other measures

Article 5 – Co-operation and coordination of national stakeholders

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure effective co-operation and coordination of all public authorities in the fight against manipulaton of sports results.

2. Each Party shall invite national sports organisations, betting operators and other interested organisations, where appropriate, to take part in activities for designing policies and actions to effectively fight manipulation of sports results and to ensure an overall approach on the basis of clear responsibilities of all those involved, as well as the definition of mechanisms of consultation, exchange of information and co-ordination between the stakeholders concerned. Public authorities may, where appropriate, act as co-ordinators of joint activities.

3. Each Party shall invite sports organisations and betting operators to co-operate in the fight against manipulation of sports results in order to clarify the respective commitments of both partners to combat manipulation of sports results and to ensure that the exchange of information is sufficient to ensure that the betting monitoring systems set forth in Article 14 of this Convention allow sports organisations to apply sanctions and other measures set forth in Articles 9 and 22 of this Convention.

4. Each Party shall invite sports organisations and betting operators to increase awareness among their athletes, members and employees on the issue of manipulation of sports results and its consequences through education, training and publicity.

Article 6 – Risk assessment and management

Each Party shall develop measures to identify and manage risks associated with the manipulation of sports results, particularly in the context of the development of betting activities, and consider the establishment of a viable, equitable and sustainable regulatory framework to protect the integrity of sport. Sports organisations and betting operators shall be invited to do the same.

Article 7 – Public encouragement and support

1. Each Party shall encourage sports organisations, betting operators and other organisations, as appropriate, to adopt specific internal regulations for the protection of the integrity of sport.
2. Each Party shall adopt such legislative and other measures as may be necessary to enforce or promote the internal regulations set forth in Paragraph 1 by public standards or policies, in full compliance with general rules on the autonomy of sports organisations, betting operators or other organisations, as appropriate, and in particular with the principle of autonomy of sport.
3. Each Party shall consider adopting measures to financially support non-governmental organisations, particularly national sports organisations, clubs, athletes' organisations and organisations fighting corruption, which have the primary responsibility for implementing awareness-raising, educational and information programmes on manipulation of sports results.

Article 8 – Protection of athletes

Each Party shall adopt such legislative and other measures as may be necessary to encourage sports organisations to ensure good conditions for their professional athletes, including through schemes aimed at safeguarding their salaries and through bans on participation at different levels of competition for sports organisations failing to regularly fulfil their financial obligations towards their athletes.

Article 9 – National sports organisations

Each Party shall invite national sports organisations to adopt regulations concerning their respective rights, duties and best practices, in particular:

a) rules against manipulation of sports results, in line with the standards adopted by the relevant international sports organisations; these rules may include:
    i) rules on the prevention of conflicts of interest of athletes in particular by:
        - introducing bans on betting on their own events and/or competitions
        - restricting the use or passing on of insider information;
        - prohibiting the provision or receipt of any gift or other benefit in circumstances that might reasonably have been expected to bring them into disrepute;
    ii) rules on the prevention and punishment of any offence established in accordance with this Convention and related breaches of codes of conduct;
    iii) systems for possible cancellation of sports events or disqualification of competitors where a risk of fraud has been established/identified;

iv) obligations for athletes and accessories to report full details of any approaches or invitations to engage in conduct or incident that would amount to a breach of the rules related to manipulations of sports results;

v) duties to co-operate with any reasonable investigation carried out by the sports governing bodies or public authorities;

vi) effective, proportionate and dissuasive sanctions for athletes and accessories found to be in breach of these rules, such as temporary or permanent bans on further sports activities, reimbursement of pecuniary damage caused, etc;

vii) mechanisms for temporary prohibition of participation in sports activities of athletes under prosecution;

b) supervisory procedures in the area of manipulation of sports results, especially the assessment of risks of manipulations related to competitions or events, e.g. in the framework of an appropriate betting monitoring system;

c) disciplinary procedures, in line with agreed international general principles of law and ensuring respect for the fundamental rights of suspected athletes; these principles include:

i) investigating and disciplinary bodies to be distinct from one another;
ii) the right of such persons to a fair hearing and to be assisted or represented;
iii) clear and enforceable provisions for appealing against any judgment given;

d) procedures for the mutual recognition of suspensions and other sanctions imposed by other sports organisations, including in other countries;

e) invitation to athletes to participate actively in the fight against manipulation of sports results;

f) mechanisms for swift and effective assistance and exchange of information, including of a spontaneous character, among relevant organisations on all aspects of concrete cases of manipulation of sport results;

g) mechanisms for education, training and publicity in order to raise awareness and knowledge among athletes on the issue of manipulation of sports results and its consequences;

h) codes of conduct for their managers.

Article 10 – Referees and judges

1. Each Party shall encourage sports organisations to select referees and judges at the latest possible stage before the competition or the event.

2. Each Party shall invite sports organisations to consider introducing random financial audits for referees and judges and to ensure regular scrutiny of their field decisions.

3. Each Party shall encourage sports organisations to introduce arrangements for recording and monitoring by sports experts competitions or events where there is risk of fraud.

Article 11 – Financing of sports organisations

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure full transparency of financing of sports organisations.

2. Each Party shall consider the possibility to helping sports organisations by funding mechanisms for combating the manipulation of sports results either through direct subsidies or grants or by taking the

cost of such mechanisms into account when determining the overall subsidies or grants to be awarded to those organisations.

3. Each Party shall adopt such legislative or other measures to ensure that no public financial support is granted to individual sports organisations or athletes sanctioned for manipulation of sports results, for the duration of the sanction.
4. Each Party shall adopt such legislative and other measures as may be necessary to ensure that sponsors of sports organisations play no role in, and exercise no influence on, the sporting decisions taken by the sponsored team or individual athletes.
5. Each Party shall adopt such legislative and other measures as may be necessary to ensure that sports organisations do not accept a betting operator as a sponsor unless it holds an official licence, which is recognised in accordance with national and international legal provisions.

Article 12 – Organisation of the betting market

1. Each Party shall adopt such legislative and other measures as may be necessary to diferentiate between legal and illegal forms of sports betting.
2. Each Party shall identify regulatory authority/ies for its betting market that are entrusted with the task of developing, establishing and monitoring the implementation of a legal framework for the betting market.

Article 13 – Betting regulatory authority

1. Each Party shall authorise its betting regulatory authority/ies to apply all relevant measures for the protection of the integrity of sports betting.
2. Each Party shall authorise its betting regulatory authority/ies to provide, in a timely manner, law enforcement agencies and other relevant public authorities with information on possible illegal and/or irregular sports betting and other breaches of relevant regulations.
3. Each Party shall adopt such legislative and other measures as may be necessary to ensure that betting regulatory authority/ies restrict the organisation of sports bets to the results of official and significant sports events for adults (unless minors compete in a competition for adults), possibly above a certain level.
4. Each Party shall authorise its betting regulatory authority/ies to explore the possibility of ensuring that no betting is allowed on a sports event unless the organiser of the event has been informed and has given prior approval, in accordance with the fundamental principles of international and national law.
5. Each Party shall authorise its betting regulatory authority/ies to take action against the betting operator in case of abuse by a betting operator of a position of sponsor, owner or part-owner of a sports organisation, leading to the manipulation of sports results or the misuse of insider information.
6. Each Party shall authorise its betting regulatory authority/ies to ensure the sharing of information between different betting monitoring systems and explore possibilities for the establishment of a consolidated betting monitoring system.

Article 14 – Betting operators

1. Each Party shall adopt such legislative and other measures as may be necessary to prevent conflicts of interest and misuse of insider information by the betting operators' owners and employees. In particular, they shall prevent them from:
    a) betting on their own betting products;
    b) influencing any sporting decision taken by athletes or teams in competitions offered for bets;
    c) taking part as athletes or acting as sports officials in events and/or competitions for which they have been involved in compiling the odds.
2. Each Party shall adopt such legislative and other measures as may be necessary to ensure that betting operators prevent sports organisations from having a controlling interest in their companies.
3. Each Party shall invite betting operators to adopt self-regulatory rules, among others on:
    a) the prevention of conflicts of interest for themselves, their owners and employees;
    b) the prohibition of high-risk bets;
    c) the limitation of the amounts of certain bets that are more risky;
    d) the systematic use of credit cards or bank transfers for financial transactions above a certain amount;
    e) the introduction of additional preventive measures for certain types of bets;
    f) the establishment of betting monitoring systems and the co-operation with the sport or public monitoring systems for identification of suspicious bets;
    g) mechanisms for sharing collected information with relevant public authorities, sports organisations and other betting operators;
    h) development of channels for regular reporting of their findings on manipulation of sports results to the public.
4. Each Party shall adopt such legislative and other measures as may be necessary to ensure full transparency of all financial transactions related to betting in order to monitor suspicious bets with the relevant public authorities and/or sports organisations
5. Each Party shall adopt such legislative and other measures as may be necessary to ensure that betting operators swiftly report suspicious bets to the competent public authorities, as well as to sports organisations and other betting operators.
6. Each Party shall adopt such legislative and other measures as may be necessary to ensure that betting operators interrupt the validation of bets placed on matches for which a high probability of manipulation of sports results has been determined by the betting monitoring system/s.
7. Each Party shall adopt such legislative and other measures as may be necessary to ensure that teams or individual competitors under investigation or subject to sanctions for manipulation of sports results are banned or excluded from the betting offer.

Article 15 – Illegal sports betting

With a view to combating manipulation of sports results each Party shall explore the possibilities of fighting against illegal sports betting, in particular targeting those websites which present a special risk for the

integrity of sport as they are offering bets outside any integrity principles as described in this Convention, i.e. by considering the effectiveness and the efficiency of measures such as:

a) restricting the access to those illegal websites in accordance with the international standards on the protection of freedom of expression and access to information;

b) blocking financial flows between those illegal operators and players;

c) prohibiting advertisement for these illegal betting operators.

Chapter III – Criminalisation and law enforcement

Article 16 – Legislative and other measures

1. Each Party shall review its national law to ensure that, in accordance with the fundamental principles of its legal system:

    a) any manipulation of sports results, as well as aiding or abetting to it, may be sanctioned as a criminal offence, when it involves corrupt practices, fraudulent practices, coercive practices or collusive practices.

    b) manipulation of sports results generating proceeds is considered as a predicate offence for the criminal offence of money laundering;

    c) legal persons may be held liable for any criminal or other illegal act provided for in the present Convention;

    d) acts or omissions, when committed intentionally, in order to commit, conceal or disguise any criminal or other offence set forth in this Convention, in particular:

        i. creating or using an invoice or any other accounting document or record containing false or incomplete information;

        ii. unlawfully omitting to make a record of a payment;

    may be sanctioned as a criminal offence.

2. Each Party shall adopt such legislative and other measures as may be necessary, in accordance with the fundamental principles of its legal system, to apply the relevant provisions on cybercrime (e.g. the Budapest Convention on Cybercrime of 23 November 2001 - ETS No. 185) to criminal or other illegal acts, committed using computer systems related to manipulation of sports results or illegal and irregular bets.

3. Each Party shall adopt such legislative and other measures as may be necessary to provide effective and appropriate protection for:

    a) those who, in good faith, report the criminal offences established in accordance with this Convention or otherwise co-operate with the investigating or prosecuting authorities;

    b) witnesses who give testimony relating to these offences.

4. Each Party shall adopt legislative and other measures enabling the preservation of computer data and other records relating to sporting bets.

5. Each Party shall adopt legislative and other measures as may be necessary to ensure that betting operators and sports organisations which do not voluntarily co-operate in submitting data in their possession or under their control are obliged to do so, in the framework of betting monitoring systems.

Betting operators and sports organisations should be subject to effective, proportionate and dissuasive sanctions, including pecuniary ones, and other measures in the event that they do not co-operate with public authorities or if they hinder the collection of electronic evidence in the field of sporting bets.

6. Each Party shall consider whether customer identification in sporting bets transactions could be monitored in the framework of the prevention of money laundering.

Article 17 – Jurisdiction

1. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with this Convention where:
    a) the offence is committed in whole or in part in its territory;
    b) or on board a ship flying the flag of that Party; or
    c) on board an aircraft registered under the laws of that Party; or
    d) the offender is one of its nationals.
2. Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 b through 1 d of this article or any part thereof.
3. If a Party has made use of the reservation possibility provided for in paragraph 2 of this article, it shall adopt such measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with this Convention, in cases where an alleged offender is present in its territory and it does not extradite him to another Party, solely on the basis of his nationality, after a request for extradition.
4. This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.
5. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

Article 18 – Law enforcement

1. Each Party shall adopt such measures as may be necessary to ensure that public authorities, as well as any public official, co-operate, in accordance with national law, with those of its authorities responsible for investigating and prosecuting criminal offences:
    a) by informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences established in accordance with this Convention has been committed, or
    b) by providing, upon request, to the latter authorities all necessary information.
2. Each Party shall review its national law to ensure that law enforcement agencies have all appropriate investigative means such as monitoring of communications, seizing of material, covert surveillance, monitoring of bank accounts and other financial investigations in the fight against manipulation of sports results, especially in cases of manipulation of competitions offered for bets;

3. Each Party shall adopt legislative and other measures to ensure, in accordance with the national law and on the basis of applicable bilateral and multilateral treaties, the use of effective channels for the exchange of intelligence and information related to the investigation and/or prosecution of manipulation of sports results at national and international level.
4. Each Party shall assist other Parties to the fullest extent possible and ensure spontaneous exchange of intelligence and information on manipulation of sports results between national, foreign and international authorities, where there are reasonable grounds to believe that any offence established in accordance with this Convention has been committed, and provide, upon request, all necessary information to the national, foreign or international authority requesting them.
5. Each Party shall identify a focal point to collect and centralise information provided by sports organisations and betting operators and to advise and support sports organisations and betting operators seeking co-operation with law enforcement on exchange of intelligence or possible prosecution, taking into account the existing national structures.

Chapter IV – Sanctions

Article 19 – Different sanctions and measures

1. Each Party shall ensure that criminal, administrative and disciplinary sanctions may be applied to manipulation of sports results and related activities.
2. Each Party shall entrust application of criminal and administrative sanctions to its public authorities and application of disciplinary sanctions to sports organisations, betting operators and other organisations, if appropriate.
3. Each Party shall ensure application of additional measures accompanying primary sanctions, such as temporary or permanent ban for further sports activities of sanctioned athletes, suspension or withdrawal of licences for sanctioned betting operators and closing of internet sites.
4. Each Party shall ensure that all procedures leading to the application of sanctions set forth in Paragraph 1 are in line with agreed international general principles of law and shall ensure respect for the fundamental rights of suspected persons; these principles include:
    a) prohibition of the imposition of more than one sanction for the same offence;
    b) investigating and sanctioning bodies to be distinct from one another;
    c) the right of such persons to a fair hearing and to be assisted or represented;
    d) clear and enforceable provisions for appealing against any judgment given.

Article 20 – Criminal sanctions and measures

1. Having regard to the serious nature of the criminal offences referred to or established in accordance with this Convention, each Party shall provide, in respect of those criminal offences, effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.
2. Each Party shall ensure that legal persons held liable in accordance with Article 16 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

3. Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with this Convention, or property the value of which corresponds to such proceeds.

Article 21 – Administrative sanctions and measures

1. Each Party shall adopt such legislative and other measures as may be necessary to sanction administrative violations established in accordance with this Convention by effective, proportionate and dissuasive sanctions and measures.
2. Each Party shall ensure the right of sanctioned persons to seek judicial protection against decisions on administrative sanctions.

Article 22 – Disciplinary sanctions and measures

1. Each Party shall invite sports organisations to apply effective, proportionate and dissuasive disciplinary sanctions and measures to breaches of their rules against manipulation of sports results, including the ones set forth in Article 9, Subparagraph a of this Convention.
2. Each Party shall invite betting operators to apply effective, proportionate and dissuasive disciplinary sanctions and measures to breaches of their self-regulatory rules, including the ones set forth in Article 14, Paragraph 3 of this Convention.
3. Each Party shall ensure recognition and enforcement of disciplinary decisions of sports organisations and betting operators in its legal system, and, where appropriate, support their enforcement by a designated public sports authority, by an umbrella sports organisation or by the betting regulatory authority.

Chapter V – International co-operation

Article 23 – General principles and measures for international co-operation in criminal matters

1. The Parties shall co-operate with each other, in accordance with the provisions of relevant international instruments on international co-operation in criminal matters, or arrangements agreed on the basis of uniform or reciprocal legislation, and in accordance with their national law, to the widest extent possible for the purposes of investigations and proceedings concerning criminal offences established in accordance with this Convention.
2. Where no international instrument or arrangement referred to in paragraph 1 is in force between Parties, articles 24 to 29 of this chapter shall apply.
3. Articles 24 to 29 of this chapter shall also apply where they are more favourable than those of the international instruments or arrangements referred to in paragraph 1.

Article 24 – Mutual legal assistance

1. The Parties shall afford one another the widest measure of mutual legal assistance by promptly processing requests from authorities that, in conformity with their domestic laws, have the power to investigate or prosecute criminal offences established in accordance with this Convention.
2. Mutual legal assistance under paragraph 1 of this article may be refused if the requested Party believes that compliance with the request would undermine its fundamental interests, national sovereignty, national security or *ordre public*.
3. Parties shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

Article 25 – Extradition

1. The criminal offences established in accordance with this Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.
2. If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence established in accordance with this Convention.
3. Parties that do not make extradition conditional on the existence of a treaty shall recognise criminal offences established in accordance with this Convention as extraditable offences between themselves.
4. Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.
5. If extradition for a criminal offence established in accordance with this Convention is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the requesting Party, and shall report the final outcome to the requesting Party in due course.

Article 26 – Spontaneous information

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on facts when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request by that Party under this chapter.

Article 27 – Central authority

1. The Parties shall designate a central authority or, if appropriate, several central authorities, which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.

2. Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of paragraph 1 of this article.

Article 28 – Direct communication

1. The central authorities shall communicate directly with one another.
2. In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.
3. Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).
4. Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.
5. Requests or communications under paragraph 2 of this article, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.
6. Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this chapter are to be addressed to its central authority.

Article 29 – Information

The requested Party shall promptly inform the requesting Party of the action taken on a request under this chapter and the final result of that action. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.

Article 30 – Sports governing bodies

1. At the international level, particular self-regulatory and disciplinary responsibilities in the fight against manipulation of sports results lie with sports governing bodies and their affiliated national organisations.
2. Each Party shall explore possibilities to develop or enhance co-operation with sports governing bodies and their affiliated national organisations in the fight against sports manipulation, especially in the areas of financing of sport, as set forth for national sports organisations in Article 11 of this Convention and exchange of information as set forth in Article 26 of this Convention.

Article 31 – Recognition of sanctions of sports governing bodies

Each Party shall ensure recognition and enforcement of disciplinary decisions of sports governing bodies and their affiliated national organisations in its legal system, and, where appropriate, support their enforcement by a designated public sports authority or by an umbrella sports organisation.

Article 32 – Exchange of information between Parties and sports governing bodies

1. Without prejudice to its own investigations or proceedings, a Party shall with or without prior request directly forward to sports governing bodies or their affiliated national organisations information on facts when it considers that the disclosure of such information might assist sports governing bodies and their affiliated national organisations in initiating or carrying out their inquiries or proceedings concerning manipulation of sports results.
2. Sports governing bodies or their affiliated national organisations may promptly inform public authorities of the Party under Paragraph 1 of this article of the action taken on the basis of received information and the final result of that action.
3. Without prejudice to its own inquiries or proceedings, sports governing bodies and their affiliated national organisations may with or without prior request directly forward to public authorities of the Party information on facts when it considers that the disclosure of such information might assist the Party in initiating or carrying out their investigations or proceedings concerning criminal offences established in accordance with this Convention.
4. Each Party under Paragraph 3 of this article shall promptly inform sports governing bodies or their affiliated national organisations of the action taken on the basis of received information and the final result of that action.

Article 33 – Umbrella organisations of betting regulatory authorities, lotteries and/or betting operators

1. At the international level, particular self-regulatory and disciplinary responsibilities in the fight against manipulation of sports results lie with the umbrella organisations of betting regulatory authorities, lotteries and/or betting operators, in the framework of the rules set up by their respective national regulators.
2. Each Party shall consider adopting such legislative and other measures as may be necessary to ensure participation of its betting regulatory authority/ies in the umbrella organisation of betting regulatory authorities facilitating international co-operation and, among others, establishing a sustainable dialogue with umbrella organisations of lotteries and/or betting operators on harmonisation of measures against manipulation of sports results at the international level.
3. Each Party shall explore possibilities to develop or enhance co-operation with umbrella organisations of betting regulatory authorities, lotteries and/or betting operators in the fight against manipulation of sports results, especially in the areas of restrictions of sports betting as set forth in Articles 13 and 14 of this Convention, betting monitoring systems and monitoring of and reporting on suspicious bets as set forth in Article 14 of this Convention and fighting illegal sports betting as set forth in Article 15 of this Convention.

Chapter VI – Follow up

Article 34 – Conventional Committee

1. For the purposes of this Convention, a Conventional Committee is hereby set up.

2. Any Party shall be represented on the Conventional Committee by three experts, representatives of relevant public authorities responsible for sport, law-enforcement and betting regulation.. Each Party shall have one vote.
3. Any State which is not a Party to this Convention may be represented on the Conventional Committee by an observer.
4. The Conventional Committee may invite any State which is not a Party to the Convention and any sports or other organisation, if appropriate, to be represented by an observer at its meetings.
5. The Conventional Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held as soon as reasonably practicable, and in any case within one year after the date of the entry into force of the Convention. It shall subsequently meet whenever necessary, at least once a year at the initiative of the Conventional Committe itself or a Party.
6. A majority of the Parties shall constitute a quorum for holding a meeting of the Conventional Committee.
7. The Conventional Committee shall meet in private.
8. Subject to the provisions of this Convention, the Conventional Committee shall draw up and adopt by consensus its own Rules of Procedure.
9. Necessary secretariat services to the Conventional Committee shall be provided by the Secretary General.

Article 35 – Functions of the Conventional Committee

1. The Conventional Committee shall monitor the application of this Convention. It may in particular:
    a) keep under review implementation of the provisions of this Convention, mainly through examination of national evaluation reports drawn up by means of questionnaires and through examination of information provided by sports governing bodies and umbrella organisations of betting regulatory authorities, lotteries and/or betting operators;
    b) hold consultations with relevant sports governing bodies and umbrella organisations of betting regulatory authorities, lotteries and/or betting operators;
    c) make recommendations to the Parties concerning measures to be taken for the purposes of this Convention;
    d) keep relevant international organisations and the public informed about the activities undertaken within the framework of this Convention;
    e) make recommendations to the Committee of Ministers of the Council of Europe concerning non-member States of the Council of Europe to be invited to accede to this Convention;
    f) propose amendments to articles of this Convention ;
    g) submit to the International Forum on Sports integrity reports on the results of the monitoring of application of the Convention;
    h) make any proposal for improving the effectiveness of this Convention
    i) approve as by-law to the Convention any revision thereto and fix the date for the relevant decisions to enter into force of

a. the list of bet types considered as high-risk bets and "more risky bets", referred to in Articles 14.3b) and c) ;

b. the criteria for defining "suspicious bets", referred to in Article 14.5;

c. the criteria for defining websites which present a special risk for the integrity of sport, referred to in Article 15.

2. In order to discharge its functions, the Conventional Committee may, on its own initiative, arrange for meetings of experts or for consultative or assessment visits in the State Parties.

Article 36 – Reports of the Conventional Committee

After each meeting, the Conventional Committee shall forward to the State Parties a report on its work and on the functioning of the Convention.

Article 37 – International Forum on Sports integrity

1. An International Forum on Sports integrity is hereby established to improve the capacity of and co-operation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.
2. The Secretary General of the Council of Europe shall convene the International Forum on Sports integrity not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the International Forum on Sports integrity shall be held in accordance with the rules of procedure adopted by the Forum.
3. The International Forum on Sports integrity shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out its activities.
4. The International Forum on Sports integrity shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:
    a) Facilitating activities by States Parties under chapters II to V of this Convention,
    b) Facilitating the exchange of information among States Parties on patterns and trends in manipulation of sports results and on successful practices for preventing and combating it, through, inter alia, the publication of relevant information as mentioned in this article;
    c) Co-operating with relevant international and regional sports, betting and other organizations and mechanisms and non-governmental organizations;
    d) Making appropriate use of relevant information produced by organisations and mechanisms under sub-paragraph c for combating and preventing manipulation of sports results in order to avoid unnecessary duplication of work;
    e) Reviewing periodically the implementation of this Convention by its States Parties as assessed by the Conventional Committee in accordance with Article 35 of this Convention;
    f) Making recommendations to the Conventional Committee to improve this Convention and its implementation;

g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect,

h) Considering the establishment of a permanent international body for the fight against manipulation of sports results.

5. For the purpose of paragraph 4 of this article, the International Forum on Sports integrity shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through information provided by the Conventional Committee as foreseen in Article 35 of this Convention.

6. Delegation of each State Party for the International Forum on Sports integrity shall be composed of representatives of public authorities, sports organisations and betting operators.

Article 38 – Secretariat

1. The Secretary General of the Council of Europe shall provide the necessary secretariat services to the International Forum on Sports integrity.

2. The secretariat shall:

a) Assist the International Forum on Sports integrity in carrying out the activities set forth in Article 37 of this Convention and make arrangements and provide the necessary services for the sessions of the International Forum on Sports integrity;

b) Upon request, assist States Parties in providing information to the International Forum on Sports integrity as foreseen in Article 37, paragraph 5 of this Convention; and

c) Ensure the necessary coordination with the secretariats of relevant international and regional organisations and mechanisms.

Chapter VII – Final provisions

Article 39 – Signature and entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe and by non-member States which have participated in its elaboration.

2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3. This Convention shall 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 States, including at least three member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraphs 1 and 2.

4. In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Convention in accordance with the provisions of paragraphs 1 and 2.

Article 40 – Accession to the Convention

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe after consulting the Contracting States to the Convention, may invite the European Union as well as any State not a member of the Council of Europe to accede to this Convention. The decision shall be taken by the majority provided for in Article 20.d. of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.
2. In respect of any State acceding to the Convention under paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 41 – Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 42 – Relationship to other conventions and agreements

1. This Convention does not affect the rights and undertakings derived from international multilateral conventions concerning special matters.
2. The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
3. If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention, if it facilitates international co-operation.

Article 43 – Effects of the Convention

1. The purpose of the present Convention is also to supplement applicable multilateral or bilateral treaties or arrangements as between the Parties, including the provisions of:
    i. the European Convention on Extradition, opened for signature in Paris, on 13 December 1957 (ETS No. 24);
    ii. the European Convention on Mutual Assistance in Criminal Matters, opened for signature in Strasbourg, on 20 April 1959 (ETS No. 30);
    iii. the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, opened for signature in Strasbourg, on 17 March 1978 (ETS No. 99).

2. If two or more Parties have already concluded an agreement or treaty on the matters dealt with in this Convention or have otherwise established their relations on such matters, or should they in future do so, they shall also be entitled to apply that agreement or treaty or to regulate those relations accordingly. However, where Parties establish their relations in respect of the matters dealt with in the present Convention other than as regulated therein, they shall do so in a manner that is not inconsistent with the Convention's objectives and principles.
3. Nothing in this Convention shall affect other rights, restrictions, obligations and responsibilities of a Party.

Article 44 – Federal clause

1. A federal State may reserve the right to assume obligations under chapters II, III and IV of this Convention 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 co-operate under Chapter V.
2. When making a reservation under paragraph 1, a federal State may not apply the terms of such reservation to exclude or substantially diminish its obligations to provide for measures set forth in chapters III and IV. Overall, it shall provide for a broad and effective law enforcement capability with respect to those measures.
3. With regard to the provisions of this Convention, the application of which comes under the jurisdiction of constituent States or other similar territorial entities, that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States of the said provisions with its favourable opinion, encouraging them to take appropriate action to give them effect.

Article 45 – Reservations

By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservations provided for in Article 17, paragraph 2 and Article 44, paragraph 1.

Article 46 – Status and withdrawal of reservations

1. A Party that has made a reservation in accordance with Article 45 may wholly or partially withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect on the date of receipt of such notification by the Secretary General. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date on which the notification is received by the Secretary General, the withdrawal shall take effect on such a later date.
2. A Party that has made a reservation as referred to in Article 45 shall withdraw such reservation, in whole or in part, as soon as circumstances so permit.
3. The Secretary General of the Council of Europe may periodically enquire with Parties that have made one or more reservations as referred to in Article 45 as to the prospects for withdrawing such reservation(s).

Article 47 – Amendments

1. Amendments to the articles of this Convention may be proposed by a Party, the Conventional Committee or the Committee of Ministers of the Council of Europe.
2. Any amendment proposed by a Party, by the Conventional Committe or the Committee of Ministers shall be communicated to the International Forum on Sports integrity at least two months before the meeting at which it is to be considered. The International Forum on Sports integrity shall submit to the Committee of Ministers its opinion on the proposed amendment, where appropriate after consultation with the relevant sports governing bodies and umbrella organisations of betting regulatory authorities, lotteries and/or betting operators.
3. The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the International Forum on Sports integrity and may adopt the amendment.
4. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
5. Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the first day of the month following the expiration of a period of one month after all Parties have informed the Secretary General of their acceptance thereof.

Article 48 – Settlement of disputes

1. EPAS shall be kept informed regarding the interpretation and application of this Convention.
2. In case of a dispute between Parties as to the interpretation or application of this Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the EPAS, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

Article 49 – Denunciation

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 50 – Notification

1. The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in the elaboration of this Convention as well as any State which has acceded to, or has been invited to accede to, this Convention of:
    a) any signature;
    b) the deposit of any instrument of ratification, acceptance, approval or accession;
    c) any date of entry into force of this Convention in accordance with Articles 39 and 40;
    d) any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at _____, this _____2012, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.

APPENDIX XIV

Strasbourg, 8 August 2012 EPAS (2012) 23rev1

Enlarged Partial Agreement on Sport (EPAS)

Framework and timetable for the process of negotiating a draft international convention to combat the manipulation of sports results

This document sets out the framework and provisional timetable for negotiating the draft international convention to combat the manipulation of sports results, notably match-fixing.

Basis

The process is based on the decision CM/Del/Dec/1145/8.1 of the Committee of Ministers of the Council of Europe dated 13 June 2012, following Resolution No. 1 adopted by the 12th Council of Europe Conference of Ministers responsible for Sport.

The scope of the draft instrument and its provisions should be based on Recommendation CM/Rec(2011)10, and on the feasibility study MSL12 (2012) 4 rev3.

Aim

The aim of the process is to present the Committee of Ministers with a draft convention of the Council of Europe. Depending on the Committee of Ministers' decision, the draft will be finalised as a convention and submitted to the Parliamentary Assembly of the Council of Europe for opinion, or referred to EPAS so that it can be finalised as a non-binding legal instrument.

Drafting group

The drafting group will be established by the EPAS Governing Board. It will consist of representatives of the states involved in the negotiations. A representative of the European Union will also participate in the drafting group. Its decisions are adopted by consensus. Where there is no consensus, it may, in exceptional cases, take decisions by a two-thirds majority of the votes cast by representatives of the EPAS member and observer states and of the states invited to participate in the negotiation process.

The following institutions and international organisations are invited to take part in the drafting group, in an advisory capacity: UNODC, Interpol, UNESCO and the FATF, together with: the PACE, the Congress, the CDPC, T-PD, T-DO, T-RV, Moneyval and GRECO.

The Chair may further decide, depending on the items on the agenda, to invite experts to act as consultants or to seek advice from sectors of the Secretariat General of the Council of Europe (e.g. the Economic Crime Division).

The drafting group usually meets for 3-day sessions, in Strasbourg.

It has a Chair and two Vice-Chairs, representing authorities in various sectors. The Chair and Vice-Chairs are elected by the EPAS Governing Board, among the delegations appointed.

Participating states

EPAS member states and observers are automatically invited to participate in the drafting group.

All States parties to the European Cultural Convention will be invited to express their interest and may be invited by EPAS to participate in the drafting group. In addition, any other interested state may be invited to take part by decision of the EPAS.
These states should nevertheless :
a) be invited upon unanimous decision by the EPAS Governing Board, or
b) benefit from authorisation to participate in the drafting of the convention made by the Committee of Ministers in its composition restricted to the representatives of the EPAS member states by two-thirds majority, or
c)[38] benefit from authorisation from the Committee of Ministers in its composition restricted to the representatives of the EPAS member states provided for in Article 2.2 of the EPAS statute.
The Governing Board wishes to generate interest among non-European states in different continents. The present document will be published on the EPAS website and sent to states having observer statute with the Council of Europe or with the Parliamentary Assembly of the Council of Europe. Any suggestion from EPAS partner organisations to draw the attention of other relevant states will be appreciated.

Preparatory consultative meetings
Prior to meetings of the drafting group, a one-day preparatory consultative meeting may be held to:

- determine the position of the organisations concerned;
- identify any contentious issues so that the Chair and Vice-Chairs can prepare the drafting group's discussions;
- suggest amendments to the agenda or to meeting documents.

[38] Procedure "c)" may apply only to non EPAS states, which are not parties to the European Cultural Convention.

The organisations invited to attend the preparatory consultative meetings will differ depending on the type of drafting group. They will consist of the following organisations:

Meeting of the drafting group with the focus on sports issues	**Meeting of the drafting group with the focus on legal issues**	**Meeting of the drafting group with the focus on betting**	**Plenary meeting of the drafting group**
GdRS	GdRJ	GdRP	GdR
• UEFA • IOC	• International Prosecutors Association	• UEFA • IOC • World Lotteries • Representative of private betting operators (to be agreed between RGA, EGSA and ESSA)	• UEFA • IOC • International Prosecutors Association • World Lotteries • Representative of private betting operators (to be agreed between RGA, EGSA and ESSA)

The preparatory consultative meetings usually take place for one day or shorter sessions, in Paris, or may be organised as teleconferences. These meetings will be chaired by the Chair and/or Vice-Chairs of the Drafting Group.

National delegations to the drafting groups

The governments of EPAS member and observer states and those states invited to participate in the negotiations are invited to designate one or several representatives to the drafting group by means of the Permanent Representations to the Council of Europe, or if there is no permanent representation, via the diplomatic mission.

In a circular letter to the Permanent Representations to the Council of Europe, (or to their diplomatic mission), states are invited to appoint a tripartite delegation representing the following types of authorities:

- Authority responsible for sports policy (e.g. representatives to the EPAS Governing Board);
- Investigating and/or prosecuting authority or authority responsible for fighting corruption and economic crime (e.g. representatives to GRECO, the CDPC, MONEYVAL, the Network of Public Prosecutors, etc.);
- Authority responsible for supervising or regulating the sports betting market (e.g. member of the network of betting regulators set up by EPAS).

States are invited to appoint a head of delegation.

States may be represented by part of their delegation at certain meetings.

Role of the EPAS Governing Board

After the first three meetings of the drafting groups, the EPAS Governing Board, meeting in an enlarged format including members of the Consultative Committee and representatives of betting operators, will take note of the progress made and set guidelines for completing the work. It will confirm whether one or two additional meetings of the drafting group are to be held and, if need be, will specify the thematic focus of the first of the two additional meetings.

After the drafting group has completed its work, the EPAS Governing Board will take note of the conclusions and will decide, where appropriate, to submit the draft to the Committee of Ministers.

Budget
Participants' travel, board and lodging expenses are met by the states participating in the process. The costs entailed in preparing and translating documents and providing interpretation at meetings in the two official languages will be met from the EPAS budget.

Timetable

The provisional timetable covers a period of two years, so that, if need be, a convention could be opened for signature at the Council of Europe Conference of Ministers responsible for Sport in the second half of 2014.

			2012				2013												2014							
			September	October	November	December	January	February	March	April	May	June	July	August	September	October	November	December	January	February	March	April	May	June	July	August
Preparatory consultative meeting	**11.09.12**	• Background decisions • Main issues • Agenda of GdR 1	●																							
Meeting of the drafting group GdR1	**09-11.10.12**	• Confirmation of the structure • Tasks of the sub-groups • Agreement on draft 1		■																						
Preparatory consultative meeting "sport"	**5-6.11.12**	• Agenda of the 3 specialised GdR • Decide on additional background documents or opinions			●																					
Preparatory consultative meeting "legal"					●																					
Preparatory consultative meeting "betting"					●																					
Meeting of the drafting group with the focus on sports issues GdRS	**05-07.12.12**	• Identification of missing elements • Agreement on "sports" elements				■																				
Meeting of the drafting group with the focus on legal issues GdRJ	**15-17.01.13**	• Identification of missing elements • Agreement on "legal" elements					■																			
Meeting of the drafting group with the focus on betting GdRP	**29-31.01.13**	• Identification of missing elements • Agreement on "betting" elements					■																			
Preparatory consultative meeting	**04.02.13**	• Agenda of GdR 2						●																		
Meeting of the drafting group GdR2	**20-22.03.13**	• Agreement on draft 2							■																	
MINEPS V (Unesco Ministerial Meeting)	**28-30.05.13**	• Cooperation (to be confirmed by the Bureau)									⬢															
Joint meeting of the EPAS Governing Board and the EPAS Consultative Committee, open to representatives of betting operators	**26-27.06.13 (tbc)**	• GB Opinion on draft 2										◆														
Preparatory consultative meeting		• Agenda of GdR 3												●												
Meeting of the drafting group GdR3		• Agreement on draft 3													■											
Preparatory consultative meeting (if needed)		• Agenda of GdR 4														●										
Meeting of the drafting group GdR4 (if needed)		• Agreement on draft 4															■									
Joint meeting of the EPAS Governing Board and the EPAS Consultative Committee, open to representatives of betting operators		• Decision to submit draft 4 to the Deputies																◆								
Project submitted to the Deputies of the Ministers and transmitted to the assembly		• Decision to ask opinion of the PACE																	■							
Parliamentary Assembly opinion		• Opinion of PACE																		■	■	■				
Decision to open the instrument for signature		• Decision to open tor signature + date																					■	■	■	✱

APPENDIX XV

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 22 February 2012 CDPC (2012) 1 Final

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

FEASIBILITY STUDY ON CRIMINAL LAW ON PROMOTION OF THE INTEGRITY OF SPORT AGAINST MANIPULATION OF RESULTS, NOTABLY MATCH-FIXING

Document prepared by the CDPC Secretariat
Directorate General I – Human Rights and Rule of Law

CDPC website: www.coe.int/cdpc
CDPC e-mail: dgi.cdpc@coe.int

Introduction

1. On 28 September 2011, the Committee of Ministers of the Council of Europe (hereinafter the CoE) adopted Recommendation CM/Rec(2011)10 on "Promotion of the integrity of sport against manipulation of results, notably match-fixing". Following this recommendation, the Secretariat of the Enlarged Partial Agreement on Sport (EPAS) of the CoE was invited to prepare a feasibility study on the possible elaboration of a binding instrument on match-fixing.[39] In this context, the European Committee on Crime Problems (CDPC), is called upon to contribute to this feasibility study as regards the part related to criminal law issues.

2. As stressed in the recommendation, the problem of match-fixing is, *inter alia*, a serious threat to "*confidence among the public if it perceives sport as a place where manipulation gives substantial financial benefits to certain individuals, rather than as an activity where the glorious uncertainty of sport predominates.*"[40] Thus, in order to preserve the nature of sport itself based on fair-play and equal competition, ethical practices and behaviour in sport have to be forcefully and effectively applied.

3. The above recommendation was adopted in response to this need. In particular, it specifies that the expression *"manipulation of sports results"* covers: "*the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition*".[41]

4. The recommendation stresses that member states should take the following measures in order to combat manipulation of sports results. Firstly, all member states should make sure that their legal and administrative systems are provided with "*appropriate and effective legal means*" to combat this practice.[42] Secondly, where member states already have existing legislation in this respect, this legislation should be reviewed to ensure that "*manipulation of sports results - especially in cases of manipulation of competitions open to bets - including acts or omissions to conceal or disguise such conduct (…) can be sanctioned in accordance with the seriousness of the conduct.*"[43]

5. The CDPC Secretariat circulated a brief questionnaire to CDPC delegations to solicit information on criminal law provisions applicable to the manipulation of sports results as well as any legislative plans CoE member states may have in this respect. Also, CDPC delegations were invited to provide information on practical experience in the investigation and prosecution of such conduct.

CoE member states' criminal law applicable in cases of manipulation of sports results

6. The responses to the questionnaire show that only nine of the 29 member states, who responded to the questionnaire, have introduced – in some cases recently – specific criminal law provisions to address certain types of manipulation of sports results (Bulgaria, Cyprus, Georgia, Greece, Poland, Portugal, Russian Federation, Turkey and United Kingdom). All other countries responding to the questionnaire indicated that such conduct – or at least certain forms thereof – would fall under their general criminal law provisions. While the responses from member states varied in this respect, the relevant criminal law provisions most often mentioned were those on fraud and different forms of corruption.

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[39] According to Recommendation CM/Rec(2011)10, adopted by the Council of Europe on 28 September 201, the Committee of Ministers:

> "Invites EPAS, where appropriate, in co-operation with other relevant national and international bodies: … to carry out a feasibility study, in co-operation with the other concerned bodies, on the basis of this recommendation, on a possible international legal instrument that covers all aspects of prevention and the combat against the manipulation of sports results."

[40] Recommendation CM/Rec(2011)10, adopted by the Council of Europe on 28 September 2011, p.2
[41] Appendix to the Recommendation CM/Rec(2011)10, Guidelines, Sect. A, para.1.
[42] Appendix to the Recommendation CM/Rec(2011)10, Guidelines, Sect. C, para.12.
[43] Appendix to the Recommendation CM/Rec(2011)10, Guidelines, Sect. C, para.13.1

7. Most states, which do not have any specific criminal law provisions on the manipulation of sports results, also indicated that they do not have any plans to develop specific legislation in this respect. Only in Sweden is specific legislation currently being prepared, whereas in Switzerland the advisability of legislative measures is currently being studied.

8. Ten member states indicated in their responses that in their country investigations/prosecutions and perhaps convictions in cases of manipulation of sports results have taken place. This applies equally, to member states which have specific legislation (Cyprus, Greece, Portugal, Turkey, United Kingdom) as well as member states, where general criminal law provisions have been applied (Belgium, Czech Republic, Finland, France and Germany). There may be more member states with relevant experience as several respondents had indicated that they simply have no information on such investigations or convictions[44].

Specific criminal law provisions in CoE member states

9. Of the 29 CoE member states, which responded to the questionnaire, only nine[45] have made a specific provision on the manipulation of sports results. Research conducted by the CoE Secretariat shows that – in addition to the states which replied – Italy and Spain have also introduced this type of specific provisions. In these 11 countries, the criminal definition of manipulation of sports results is based on general definitions of active and/or passive corruption and/or fraud. However, the criminal law provisions introduce specific elements and/or a specific range of sanctions for such conduct. For example these criminal law provisions apply to conduct :

    - intended "to influence the development or outcome of a sports competition" (Bulgaria), or "influencing results of the competition and contest" (Georgia), or "exerting influence on the results" (Russian Federation), or "to influence a specific sports competition" (Turkey),
    - having the purpose of "the alteration of the result of any team or individual sport" (Cyprus), or "to alter the result in favour or against sports clubs, groups of paid athletes or athletic public limited companies" (Greece), or "to alter or distort the result of a sporting event" (Portugal),
    - undertaken "in order to get a different result from the one which would have been reached by a regular competition"(Italy),
    - intended to induce "unfair behaviour that might influence the result of the competition" (Poland).

10. In some cases, such provisions also refer to specific actors, whose behaviour such conduct must intend to influence for these provisions to be applicable, such as athletes, managers or members of sports clubs (Cyprus), a participant, a referee, a coach, a leader of a team, or an organisation of professional sports competition, as well as an organiser or a member of a jury of a commercial entertainment contest (Georgia, Russian Federation).

11. Criminalisation on the grounds of these provisions does not appear to be dependent on whether or not the manipulation of sports results is actually successful, i.e. the intended (manipulated) result of the sporting match is achieved. However, in Cyprus and in Greece, for instance, such a case would be considered as an aggravating circumstance by definition. The offence of the manipulation of sports results which is related to the participation in betting schemes is considered to be an aggravating circumstance under Bulgarian and Italian law whereas Polish criminal law specifically punishes a

[44] At least if a Member States has no specific legislation but applies general provisions on fraud or corruption relevant statistical data on the question whether such an investigation or conviction was for an offence of fraud or corruption related to manipulation of sports results may simply not be available.

[45] Bulgaria, Cyprus, Georgia, Greece, Poland, Portugal, Russian Federation, Turkey, United Kingdom.

person, who participates in betting schemes – or advocates such participation – knowing that the offence of manipulation of sports results has taken place.

General criminal law provisions in CoE member states

12. The majority of member states that responded to the questionnaire indicated that one or more "general" criminal law provisions could be applicable to cases of manipulation of sports results. For some of these countries, this analysis is based on successful convictions on such grounds. For the other countries the CDPC delegations' replies indicated that some of its criminal law provisions would or should be applicable in such cases.

13. Several of these member states have indicated that their criminal law provisions on fraud and corruption would cover most or at least some of the types of conduct that may be involved in the manipulation of sports results (Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Montenegro, Serbia, Slovenia and Switzerland). Several member states referred in their response to provisions on different types of corruption (Azerbaijan, Belgium, Czech Republic, Finland, France, Iceland, Latvia, Monaco, Norway and Sweden). Some member states also consider cases where their criminal law provisions on extortion (Belgium, Latvia), on money laundering (Belgium, Denmark, France) or illegal gambling (Slovenia) could become applicable. It would obviously depend on the specifics of a particular case whether or not one or the other criminal law provision could apply. Although the replies to the questionnaire show that a specific offence may be treated differently from one member state to another, this does not necessarily mean that the offence will only be dealt with in this way in the member state in question.

14. Most of these member states suggest that these general provisions would appear to be sufficient to address the phenomenon of manipulation of sports results and therefore they do not see a need to introduce new, specific offences in order to be able to combat such crimes.

Jurisdiction of CoE member states' courts and conflicts of jurisdiction

15. Manipulation of sports results and the exploitation of legal or illegal betting schemes that may be linked to such conduct often take place in a multi-country- setting. Thus for example players of a fixed match may come from one country, the match may take place in another country, the person(s) behind the fixing may come from a third country and the illegal profits stemming from such an operation may be collected in yet another country. This may raise difficult issues of jurisdiction, either because the prosecutor or court may not feel competent to address the case in its full complexity, or, because investigators and prosecutors in different countries may be attempting to bring the same persons to court for the same offences.

16. CoE conventions in the criminal law field normally require member states to introduce jurisdiction on the basis of the territoriality principle, i.e., on the basis of where the offence has taken place (which may, however, sometimes be difficult to determine or there may be more than one country to which this criterion applies in a specific case). In order to avoid impunity, CoE conventions in the criminal law field normally also require member states to exercise jurisdiction on the basis of the active and passive nationality principles (nationalities of the offender(s) and the victim/s). In most cases, however, CoE conventions allow states parties to enter reservations in respect of the latter.

17. When CoE member states are not bound by a convention in this respect, they are free to determine the extent to which they want to introduce and to which they want to exercise jurisdiction. Even when member states have become party to a CoE criminal law convention, the provisions on jurisdiction are merely setting "minimum rules", which do not prevent member states from also extending their jurisdiction to other cases beyond those with territorial links or links based on the nationality or residence of the offender or victim. In many cases, CoE conventions contain as specific "safeguard clause" which clarifies, that the convention in question does not exclude any criminal jurisdiction exercised by a Party under its national law.

18. Some, but not all, conventions contain a provision on positive jurisdiction conflicts, i.e. situations where more than one Party asserts jurisdiction and where Parties are thus required to consult each other to establish which Party should be in charge of prosecution.

Conclusion

19. Based on the findings of Recommendation CM/Rec(2011)10, it appears that tackling the phenomenon of the manipulation of sports results requires a concerted and better co-ordinated international response. In this context, practical steps have already been taken internationally and domestically.

20. However, these measures do not seem to have been effective enough. In fact, the phenomenon of the manipulation of sports results continues to spread throughout the sporting world. Therefore it may be advisable to reinforce these efforts by way of a new legal instrument to be drafted under the auspices of the CoE.

21. Furthermore, as the phenomenon of the manipulation of sports results is in itself mostly transnational, a wide political forum may be required and the CoE is conceivably a legitimate *"agora"* in which it is possible to involve not only its member states but also of other states, international sports federations and specialised NGOs. The CoE, by adopting its recommendation on "Promotion of the integrity of sport against manipulation of results, notably match-fixing", has certainly started this process of co-ordinated efforts.

22. However, the CDPC, based on the responses received from member states, is of the opinion, that any future CoE convention should focus on other measures to address this phenomenon rather than on criminal law aspects. It appears that irrespective of whether or not CoE member states have chosen to introduce specific criminal law provisions on the manipulation of sports results, member states' authorities feel confident that by-and-large the majority of cases of such conduct can be addressed under existing criminal law provisions, be they specific provisions or general criminal law on fraud, corruption or other types of offences. In particular, most CDPC delegations representing member states that have not introduced any such specific criminal law provisions currently do not see a need to develop such specific legislation.

23. In light of this, and considering the large variety of possible types of conduct that may be linked to the manipulation of sports results as well as the variety of ways found in the member states to address such cases, it does not appear to be advisable for the CoE to attempt drafting specific criminal law provisions for any possible new convention in this field. If so required, the future convention in this field, could be completmented by a general provision appealing to states parties to ensure effective criminalisation and investigation of such crimes based on applicable national law e.g. along the lines of sect. 13 of the Recommendation CM/Rec(2011)10.

24. In respect of jurisdiction, it may be useful to specify that parties to such a convention shall exercise jurisdiction on the basis of the territoriality and the active nationality principles as well as foresee that in cases where more than one state asserts jurisdiction, authorities should consult each other to establish which Party should be in charge of prosecution.

APPENDIX I

Strasbourg, 17 November 2011
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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

QUESTIONNAIRE REGARDING THE WORK OF THE COUNCIL OF EUROPE ON THE ISSUE OF "MANIPULATION OF SPORTS RESULTS, NOTABLY MATCH-FIXING"

Document prepared by the CDPC Secretariat
Directorate General I – Human Rights and Rule of Law

Introductory comment

At its 1122nd meeting, the Committee of Ministers (CM) adopted the CoE Recommendation on "Promotion of the integrity of sport against manipulation of results, notably match-fixing" (appended to this document). In this regard, the Recommendation invited the Enlarged Partial Agreement on Sport (EPAS), where appropriate, in co-operation with other relevant national and international bodies:

"– to study specific measures taken by European states and develop good practices on the issue of combating the manipulation of sports results;

– to examine the existent measures and practices in member states undertaken by sports organisations and other concerned bodies and to make an inventory of existing legislation to prevent and combat the manipulation of sports results;

– to carry out a feasibility study, in co-operation with the other concerned bodies, on the basis of this recommendation, on a possible international legal instrument that covers all aspects of prevention and the combat against the manipulation of sports results; …"[46]

In this context, the Secretariat of Criminal Law Division of the CoE has been called upon to contribute to aforementioned feasibility study with the part related criminal law aspects with the exception of corruption and money-laundering issues.

For this purpose, the Secretariat has prepared a very short questionnaire concerning criminal law issues related to the manipulation of sports results. Please do take into account that your answers are crucial to have a more comprehensive view on this issue and should be as far as possible, clear, objective and reasoned.

Please send your replies to the Secretariat (Marjaliisa.JAASKELAINEN@coe.int) by **09 December 2011** at the latest.

[46] Recommendation CM/Rec(2011)10, of the Committee of Ministers to member states on promotion of the integrity of sport against manipulation of results, notably match-fixing, (Adopted by the Committee of Ministers on 28 September 2011 at the 1122nd meeting of the Ministers' Deputies), available at Appendix I.

Questionnaire:

1. Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results[47]?

   1.1. If yes:
   1. Is that conduct subject to criminal, or administrative, or any other legal sanction?
   2. Could you please attach the text of the provision(s) which provides for such a conduct (where available please attach an English or French text)

   1.2. If not:
   1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?
   2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future?

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?

* * *

[47] You could consider the definition of "manipulation of sports results" as contained in the Appendix to the Recommendation CM/Rec(2011)10 adopted by the Committee of Ministers on 28 September 2011 at the 1122nd meeting of the Ministers' Deputies. Specifically, it stated that "the expression "manipulation of sports results" covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition."

APPENDIX I

Recommendation CM/Rec(2011)10
of the Committee of Ministers to member states
on promotion of the integrity of sport against manipulation of results, notably match-fixing

(*Adopted by the Committee of Ministers on 28 September 2011*
at the 1122nd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage, and of facilitating their economic and social progress;

Bearing in mind the Committee of Ministers' Declaration on compliance with the commitments made by member states of the Council of Europe (Strasbourg, 10 November 2004);

In accordance with the Final Declaration of the Second Summit of Heads of State and Government of the Council of Europe (Strasbourg, 10-11 October 1997), which emphasises the standard-setting role of the Council of Europe, in particular to seek common responses to the challenges posed by the spread of corruption;

Considering the conclusions of the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), which recommended the continuation of Council of Europe activities which serve as references in the field of sport;

Reiterating that Resolution CM/Res(2007)8 establishing the Enlarged Partial Agreement on Sport (EPAS) assigned to this one the task of developing standards to deal with topical issues in international sport;

Having regard to its Recommendations Rec(92)13 rev on the revised European Sports Charter, CM/Rec(2010)9 on the revised Code of Sports Ethics and Rec(2005)8 on the principles of good governance in sport;

In the light of the work and conclusions of the 11th Council of Europe Conference of Ministers responsible for Sport (Athens, 11-12 December 2008), in particular in the areas of match-fixing, corruption and illegal betting;

In the light of Resolution No. 1 of the 18th Council of Europe Informal Conference of Ministers responsible for Sport (Baku, 22 September 2010) on the promotion of the integrity of sport against the manipulation of sports results (match-fixing);

In the light of existing international efforts with regard to the fight against cybercrime;

Acknowledging that, as a general rule, the sports movement is responsible for sport, but that public authorities can, where appropriate, develop co-operation with the sports movement, in order to promote the values and benefits of sport;

Convinced that the implementation by private companies and sports organisations of effective good governance policies, including codes of ethics, would help to strengthen their self-governance in matters relating to sport and would further consolidate their position with respect to states on the basis of mutual respect and trust;
Considering that it is necessary to further develop a common European framework for the development of sport in Europe, based on the notions of pluralist democracy, the rule of law, human rights and ethical principles;

Reaffirming that the nature of sport itself, based on fair-play and equal competition, requires that unethical practices and behaviours in sport be forcefully and effectively countered;

Aware of the pressures which modern society, marked among other things by the race for success and economic profits, brings to bear on sport;

Stressing their belief that the consistent application of the principles of good governance and ethics in sport would be a significant factor in helping to eradicate corruption, manipulation of sports results (match-fixing) and other malpractices in sport;

Acknowledging that attempts to manipulate sports results constitute an important threat to the integrity of sport;

Concerned by the involvement of organised crime in the manipulation of sports results, especially at international level;

Convinced that match-fixing may erode confidence among the public if it perceives sport as a place where manipulation gives substantial financial benefits to certain individuals, rather than as an activity where the glorious uncertainty of sport predominates;

Convinced that dialogue and co-operation between public authorities, betting operators and sports organisations based on mutual respect and trust are essential in seeking effective common responses to challenges posed by the problem of manipulation of sports results;

Recalling that proceeds from lotteries and gambling are a significant source of income for sport in most European countries;

Stressing the right of governments to decide national lottery and gambling policies, in particular to achieve a fair return to sport for grassroots funding as regards betting (for example allocation of sports lotteries and betting proceeds to sport, sponsoring contracts, tax revenues allocated to sports policies in the framework of the budget of the state),

Recommends that the governments of member states of the Council of Europe which have not already done so adopt policies and measures aiming at preventing and combating the manipulation of results in all sports, in the light of the guidelines in the appendix to this recommendation;

Invites the Enlarged Partial Agreement on Sport (EPAS), where appropriate building on the experience, expertise and activities of the Group of States against Corruption (GRECO), the European Committee on Crime Problems (CDPC), Moneyval, the Conference of the Parties of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), to respond to requests for assistance by the member states' governments to facilitate the implementation of this recommendation;

Invites EPAS, where appropriate, in co-operation with the competent units of the Secretariat General, to consider monitoring and/or follow-up activities of the present recommendation;

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

- to study specific measures taken by European states and develop good practices on the issue of combating the manipulation of sports results;

– to examine the existent measures and practices in member states undertaken by sports organisations and other concerned bodies and to make an inventory of existing legislation to prevent and combat the manipulation of sports results;

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

- to provide a platform of exchange and co-operation for governments, sports movement and betting operators, on the issue of integrity of sport, to explore the feasibility of establishing a working structure and to report to the next ministerial conference;

- to explore possibilities to use the Council of Europe initiatives as a starting point towards a global response to the issue;

Calls upon EPAS, in co-operation with the European Union and the sports movement, to promote co-operation between the organisers of sports events and betting operators within the framework of national and European Union law;

Invites governments to consider, as a separate issue, the introduction of a duty on betting operators to provide an economic fair return from their sports bets for the general development of sport;

Asks the Secretary General of the Council of Europe to bring this recommendation to the attention of those states which are parties to the European Cultural Convention but are not members of the Council of Europe.

Appendix to the Recommendation CM/Rec(2011)10

Guidelines

A. Definition

1. In this document, the expression “manipulation of sports results” covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition.

2. In this document, the term “athletes” should be understood as sportsmen and sportswomen participating in organised sports activities, their support personnel and sports officials as well as anyone taking part in the activities of sports organisations in any role, including the owners of sports organisations.

3. In this document, the term “insider information” should be understood as any information relating to any competition or event that a person possesses by virtue of his or her position within sports. Such information includes, but is not limited to, factual information regarding the competitors, the conditions, tactical considerations or any other aspect of the competition or event, but does not include such information that is already published or a matter of public record, readily acquired by an interested member of the public, or disclosed according to the rules and regulations governing the relevant competition or event.

4. In this document, “sports betting” covers all sports betting-based games that involve wagering a stake with a monetary value in games in which participants may win, in full or in part, a monetary prize based, totally or partially, on chance or uncertainty of an outcome (namely, fixed and running odds, totalisator games, live betting, betting exchange, spread betting and other games offered by sports betting operators), in particular:

4.1. legal betting refers to all types of betting that are allowed in a specific territory or jurisdiction (such as by licence given by a regulator or recognition of licences given by the regulator of a third country);

4.2. illegal betting refers to all types of betting which are not allowed in a specific territory or jurisdiction;

4.3. irregular betting refers to betting when irregularities and abnormalities in the bets placed or the event upon which the bets are placed can be identified.

B. Sharing responsibilities and co-ordination

5. Responsibility for preventing and combating manipulation of sports results usually falls to nongovernmental organisations (sports movements, including professional and amateur national or international sports organisations, clubs, local sports associations, athletes' organisations and event organisers; legal organisations managing lotteries; legal betting operators; supporters' clubs; umbrella organisations of lotteries and/or betting operators; or non-governmental organisations involved in the fight against corruption), as well as to the relevant law enforcement agencies and other public authorities (including government bodies responsible for sports and the regulatory authority of the betting market). Public authorities should, where appropriate, act as co-ordinators.

6. In designing a policy and action to combat effectively manipulation of sports results, an overall approach should be adopted on the basis of clear responsibilities of all those involved, as well as on the definition of means of consultation, exchange of information and co-ordination between the parties concerned, through a framework agreement, for example.

7. In general, each stakeholder should encourage and develop measures to address risks associated with the manipulation of sports results, particularly in the context of the development of betting, and study the setting-up of a viable, equitable and sustainable regulatory framework to protect the integrity of sport.

8. Governments should also support non-governmental organisations, particularly national sports organisations, clubs, athletes’ organisations and organisations fighting corruption, which have the primary responsibility for implementing awareness-raising, educational and information programmes on the manipulation of sports results. Where appropriate, the payment of grants to sports organisations and clubs could be made conditional on a firm commitment and effective action by them to combat the manipulation of sports results and to educate their athletes and officials.

9. Regarding the sports movement at the international level, particular leadership and disciplinary responsibilities lie with sports governing bodies and their affiliated national organisations.

10. Regarding the betting industry at the international level, particular leadership and self-regulatory responsibilities lie with the umbrella organisations of lotteries and/or betting operators, in the framework of the rules set up by their respective national regulators.

11. All measures to combat manipulation of sports results must comply with the relevant European data protection standards, particularly in exchanges of information between stakeholders.

C. Legislative and other measures

12. Member states should ensure that their legal and administrative systems are provided with appropriate and effective legal means for combating manipulation of sports results.

13. Member states should review their existing legislation to ensure that:

13.1. manipulation of sports results – especially in cases of manipulation of competitions open to bets – including acts or omissions to conceal or disguise such conduct, falls within the remit of the national law and can be sanctioned in accordance with the seriousness of the conduct;

13.2. legal persons can be held liable for conduct as referred to in paragraph 13.1.

14. Member states should consider, in accordance with the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), that where the conduct referred to in paragraph 13.1 is a crime which generates proceeds, it could be deemed to be a predicate offence of money laundering.

15. Member states should consider how to make the best use of the existing legislative and/or other measures enabling the preservation of computer data and other records, as well as the application of mechanisms for whistle-blowing and the protection of whistle-blowers, in the area of manipulation of sports results.

D. Law enforcement and preventive activities of member states

16. Member states should review their national law to ensure that law enforcement and prosecuting authorities have appropriate investigative means, such as monitoring of communications, seizing of material, covert surveillance, control of bank accounts and other financial investigations in the fight against manipulation of sports results, especially in cases of manipulation of competitions offered for bets.

17. In accordance with the national law and on the basis of applicable bilateral and multilateral treaties, member states should make use of effective channels for the exchange of intelligence and information related to the investigation and/or prosecution of manipulation of sports results at national and international levels.

18. Member states should evaluate the possible positive impact of a focal point to advise and support the sports movement seeking co-operation with law enforcement and prosecuting authorities with regard to the exchange of intelligence or possible prosecution, taking into account the existing national structures, and, where appropriate, to designate such a focal point.

19. Member states should consider whether customer identification and sports-bets transactions could be monitored in the framework of the prevention of money laundering.

20. With a view to combating manipulation of sports results, member states are invited to consider the possibility of ensuring that no betting is allowed on a sports event unless the organiser of the event has been informed and has given prior approval, in accordance with the fundamental principles of international and national law.

21. Member states may establish the effective fight against manipulation of sports results as a criterion for the granting of public financial support to sports organisations.

22. Member states may help sports organisations to fund mechanisms for combating the manipulation of sports results either through direct subsidies or grants, or by taking the cost of such mechanisms into account when determining the overall subsidies or grants to be awarded to those organisations.

23. Member states should, where appropriate, take steps to ensure that no public financial support is granted to individual sports organisations, athletes or sports officials sanctioned for manipulation of sports results, for the duration of the sanction.

24. With a view to combating manipulation of sports results, member states are invited to explore the possibility of fighting against illegal sports betting by considering the effectiveness and the efficiency of measures such as:

24.1 restricting access to illegal websites (Domain Name System filtering and/or Internet Protocol blocking), while respecting the requirements of Article 10 of the European Convention on Human Rights on the protection of freedom of expression and access to information;

24.2 blocking financial flows between illegal operators and gamblers;

24.3 prohibiting advertisement for illegal betting.

25. Member states should recognise sports organisations' regulations as referred to in paragraph 26 of chapter E of these guidelines and, where appropriate, support their enforcement by a designated governmental sports authority or by an umbrella sports organisation.

E. Preventive activities of sports organisations

26. The sports movement should achieve an appropriate level of self-regulation in order to combat the manipulation of sports results. Self-regulation by the sports movement should be encouraged by governments, and possibly backed by public standards or policies.

27. Sports organisations, at national and international levels, should consider the adoption of appropriate measures to ensure good conditions for their professional athletes, notably through schemes aimed at safeguarding their salaries and through bans on participation at different levels of competition for sports organisations failing to fulfil regularly their financial obligations towards their athletes and sports officials.

28. National and international sports organisations faced with cases of manipulation of sports results should clarify and discuss their respective rights, obligations, duties and best practices, in particular:

28.1. rules against manipulation of sports results, in line with the standards adopted by the relevant international sports organisations. These rules should include:

a. rules on the prevention of conflicts of interest of athletes, in particular by:

− introducing bans on betting on their own events and/or competitions;

− restricting the using or passing on of insider information;

− prohibiting provision or receipt of any gift or other benefit in circumstances that might reasonably be expected to bring them into disrepute;

b. rules on the prevention and punishment of any offence established in accordance with these guidelines and related breaches of codes of conduct;

c. systems for possible cancellation of sports events or disqualification of competitors where a risk of fraud has been established/identified;

d. obligations for athletes, sports officials and assessors to:

− report full details of any approaches, any invitation to engage in suspicious conduct or any incident that would amount to a breach of the international or national federation's rules related to the manipulation of sports results;

− co-operate with any reasonable investigation carried out by the international federation concerned;

e. effective, proportionate and dissuasive sanctions for athletes and accessories found to be in breach of these rules, such as temporary or permanent bans on further sports activities, reimbursement of pecuniary damage caused and so forth;

f. mechanisms for the temporary prohibition from any participation in sports activities of athletes and sport officials under prosecution;

28.2. supervisory procedures in the area of manipulation of sports results, especially the assessment of risks of match-fixing related to competitions or events, for example in the framework of appropriate betting monitoring systems;

28.3. disciplinary procedures in line with agreed international general principles of law and ensuring respect for the fundamental rights of suspected athletes and sports officials. These principles include:

a. ensuring that investigating bodies and disciplinary bodies are distinct from one another;

b. the right of such persons to a fair hearing and to be assisted or represented;

c. clear and enforceable provisions for appealing against any judgment given;

28.4. procedures for the mutual recognition of suspensions and other sanctions imposed by other sports organisations, notably in other countries;

28.5. an invitation to athletes and sports officials to participate actively in the fight against manipulation of sports results;

28.6. mechanisms for swift and effective assistance and exchange of information, including spontaneous exchanges, between relevant authorities on all aspects of concrete cases of manipulation of sport results.

29. Sports organisations are encouraged to select sports officials, especially referees and judges, at the latest possible stage before the competition or event.

30. Sports organisations are invited to consider introducing random financial audits for referees and judges and to ensure regular scrutiny of their field decisions.

31. Sports organisations are encouraged to introduce arrangements for recording and monitoring competitions or events by sports experts where there is risk of fraud, in order to complement the supervision based on betting monitoring systems.

32. Sports organisations are called upon to raise awareness and knowledge among their athletes of the issue of manipulation of sports results and its consequences, through education, training and publicity.

33. Sports organisations should ensure transparency in the financing of sports. It would therefore be appropriate to ensure that ownership structures of clubs are best suited to protect stability and safeguard sporting principles.

34. Sponsorship contracts should state that the sponsor plays no role in, and will exercise no influence on, the sporting decisions taken by the sponsored team or individual. This should not exclude holding discussions on the timings of events with sponsors. Sports organisations should not accept betting operators as sponsors unless they have an official licence, which is recognised in accordance with national and international legal provisions.

F. Preventive activities of betting operators

35. Betting operators should achieve an appropriate level of self-regulation in order to combat manipulation of sports results. Self-regulation by betting operators' organisations should be encouraged by member states, especially their regulatory authorities, and possibly strengthened by public standards or policies.

36. The organisation of bets should be restricted to official and significant sports events (unless minors compete in a competition for adults), possibly above a certain level of competition.

37. In the framework of betting monitoring systems, betting operators should ensure transparency of all financial transactions related to betting in order to monitor suspicious bets (for example, the amount of the stakes on any one bet, discrepancies between the distribution of the bets and the expected logical behaviour following the odds, very high amounts placed, or the geographical distribution of suspicious bets) with the relevant member states or sports organisations. The procedure for public disclosure of information should be regulated by a non-disclosure agreement, established in compliance with the relevant national and international legal provisions. The agreement may set up confidential systems to determine whether there is a case to answer before making any public statements, and give consideration to developing and monitoring strict protocols to prevent any leaks.

38. Betting operators should report suspicious bets swiftly to the competent governmental authorities, as well as to their betting monitoring systems.

39. Member states should adopt legislative measures to ensure that betting operators and sports organisations which do not voluntarily co-operate in submitting data in their possession or under their control are obliged to do so, in the framework of betting monitoring systems, in compliance with the relevant data protection standards. Betting operators and sports organisations should be subject to effective, proportionate and dissuasive sanctions or measures, including pecuniary sanctions, in the event that they do not co-operate with government authorities or if they hinder the collection of electronic evidence in the field of sporting bets.

40. Betting operators should immediately stop the validation of bets placed on matches for which a high probability of manipulation of sports results has been determined by the betting monitoring systems.

41. Betting operators and regulators of the betting market should adopt adequate regulations to prevent conflicts of interest and misuse of insider information by their owners and employees. In particular, they should prevent them from:

41.1. betting on their own products;

41.2. influencing any sporting decision taken by any athletes or teams in competitions open to bets;

41.3. taking part or acting as referees in events and/or competitions for which they have been involved in compiling the odds (applies also to players, managers, coaches, etc.).

42. If abuse of position by a betting operator which is also a sponsor, owner or part-owner of a sports organisation takes place, leading to the manipulation of results, regulators should take action against the operator which might involve withdrawal of the operator's licence.

43. Betting operators should also take measures to prevent sports organisations from having a controlling interest in their companies.

44. Teams or individual competitors under investigation or subject to sanctions for manipulation of sports results based on betting should be excluded from the betting offer.

45. Betting operators are invited to adopt self-regulatory rules, to comply with legislation and with the agreements concluded with sports organisations in accordance with paragraph 20, among others, on:

45.1. the prevention of conflicts of interest for themselves, their owners and employees;

45.2. the prohibition of high-risk bets;

45.3. the limitation of the amounts of certain bets that are more risky (for example “fun bets”);

45.4. the systematic use of credit cards or bank transfers for financial transactions above a certain amount;

45.5. the introduction of additional preventive measures for certain types of bets (for example for live betting);

45.6. the establishment of betting monitoring systems and the establishment of co-operation with the sport or governmental monitoring systems in order to identify of suspicious bets;

45.7. mechanisms for sharing collected information with relevant public authorities, sports organisations and betting monitoring systems;

45.8. the development of channels for regular reporting of their findings on manipulation of sports results to the public.

46. Betting operators should increase awareness among their employees on the issue of manipulation of sports results and its consequences, through education, training and publicity.

G. Co-operation of relevant stakeholders in the fight against manipulation of sports results

47. Co-operation should be developed between sports organisations and betting operators in the fight against manipulation of sports results in order to:

47.1. clarify the respective commitments of both partners to combat manipulation of sports results;

47.2. ensure that the exchange of information is sufficient to ensure that the betting monitoring systems referred to in paragraphs 28.2, 31, 37, 38, 39, 40, 45.6 and 45.7 of these guidelines allow sports organisations to apply sanctions and other measures from paragraph 28.1 of chapter E of these guidelines.

48. Member states and sports organisations should work together to establish close co-operation involving exchange of information between law enforcement or prosecuting authorities and sports organisations.

49. The relevant stakeholders are invited to consider establishing a permanent international body for the fight against manipulation of sports results.

APPENDIX II

REPLIES TO THE QUESTIONNAIRE REGARDING THE WORK OF THE COUNCIL OF EUROPE ON THE ISSUE OF "MANIPULATION OF SPORTS RESULTS, NOTABLY MATCH-FIXING"

Azerbaijan / Azerbaïdjan

1. Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results?

1.1. If yes: 1. Is that conduct subject to criminal, or administrative, or any other legal sanction?

There are no specific provisions in the national legislation and there are no domestic case-law concerning the manipulation of sports results.

2. Could you please attach the text of the provision(s) which provides for such a conduct (where available please attach an English or French text)

1.2. If not: 1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?

The conduct of manipulating sport results may fall - depending on the particular circumstances of a case – under other offences, such as corruption-related offences or other offences against the public service interests set in Chapter 33 of the Criminal Code of the Republic of Azerbaijan, in particular, accepting bribes (passive bribery), giving bribes (active bribery), exertion of illegal influence on the decision-making by an official (trading in influence), as well as under other corruption-related offences, including administrative, civil law and disciplinary offences. For instance, according to the Law of the Republic of Azerbaijan on making amendments to the Criminal Code of the Republic of Azerbaijan (dated 24 June 2011), inclusion of heads and other personnel of state and municipal enterprises, entities and organizations, and other commercial and non-commercial organizations, as well as persons dealing with entrepreneurial activities without setting up a legal entity, into of the range of government officials regarded as subjects of corruption-related offences and other offences against public service interests increased the possibility of qualifying the manipulation of the sports results as corruption-related offences.

2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future?

No draft law introducing a special norm concerning the manipulation of sports results has been submitted for the consideration by the Milli Majlis (Parlament).

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?

No criminal cases or other investigative materials related to manipulation of sports results have been examined by the prosecuting authorities or the courts yet.

Belgium / Belgique

1. Existe-t-il, dans votre législation nationale, dans vos règlements et dans votre jurisprudence, une ou plusieurs disposition(s) spécifique(s) quant à la manipulation des résultats sportifs[48] ? Non

   1.1. Si oui: 1. Est-ce que ce comportement est soumis à une sanction pénale ou administrative, ou à toute autre sanction juridique ?

   . 2. Pouvez-vous, s'il vous plaît, joindre le texte de(s) la disposition(s) qui traite(nt) de ce comportement (si disponible, joignez un texte en anglais ou en français s'il vous plaît).

   1.2. Si non: 1. Est-ce que selon votre législation, la manipulation de résultats sportifs (ou certaines formes de ce comportement) relève d'une ou plusieurs infractions (pénales, administratives ou autres) ?

Le droit belge ne prévoit pas de dispositions qui visent spécifiquement la manipulation des résultats sportifs. Cependant, diverses dispositions de droit commun sont susceptibles de s'appliquer en la matière :

- Droit civil : Le Code civil belge n'accorde pas d'action en ce qui concerne les dettes de jeu ou le paiement d'un pari (Art. 1965 C. civ.). Toutefois, l'article 1966 du même code dispose que *« Les jeux propres à exercer au fait des armes, les courses à pied ou à cheval, les courses de chariots, le jeu de paume et autres jeux de même nature qui tiennent à l'adresse et à l'exercice du corps, ainsi que les jeux de hasard autorisés par la loi du 7 mai 1999 sur les jeux de hasard, les paris, les établissements de jeux de hasard et la protection des joueurs, sont exceptés de la disposition précédente. Néanmoins, le tribunal peut rejeter la demande, quand la somme lui paraît excessive. "*

- Droit pénal : Le droit pénal traditionnel s'applique aux infractions liées à la manipulation des résultats sportifs. Les dispositions relatives à la corruption, l'abus de biens sociaux, le chantage et les menaces, l'extorsion, le blanchiment, etc sont susceptibles de s'appliquer selon le cas.

  Les articles 504bis et 504ter du Code pénal relatifs à la corruption sont, en général, à la base d'une condamnation pénale en cas de fraude liée au sport. Mais, des difficultés peuvent survenir quant à leur application :
  - Ces articles visent soit l'administrateur d'une personne morale, soit le préposé d'une personne morale ou physique. Il est donc possible de poursuivre un gérant, entraineur ou footballeur d'un club de football. En revanche, avec cette définition, il n'est pas possible de poursuivre une personne qui ne fait pas partie d'une personne morale et qui a agit de son propre chef.
  - La définition prévoit aussi que la corruption doit avoir lieu à l'insu et sans l'autorisation des autres membres.

[48] Vous pourriez envisager la définition de «manipulation de résultats sportifs » figurant dans l'annexe à la Recommandation CM/ / Rec (2011) 10 adoptée par le Comité des Ministres le 28 septembre 2011, lors de la 1122e réunion des Délégués des Ministres. Plus précisément, il a été déclaré que : «l'expression "manipulation des résultats sportifs" désigne un arrangement sur une modification irrégulière du déroulement ou du résultat d'une compétition sportive ou d'un de ses événements en particulier (par exemple match, course…), afin d'obtenir un avantage pour soi-même ou pour d'autres et de supprimer tout ou partie de l'incertitude normalement liée aux résultats d'une compétition. "

- Dispositions particulières : A noter qu'il existe en droit belge la loi du 7 mai 1999 sur les jeux de hasard, les paris, les établissements de jeux de hasard et la protection des joueurs, modifiée par deux lois du 10 janvier 2010 ainsi qu'une série d'arrêtés royaux relatives aux paris.

Plus particulièrement, dans le domaine du football, le Règlement Fédéral Football définit les faits de falsification de la compétition et prévoit entre autres, des instances spécifiques compétentes, une procédure particulière et des sanctions contre les joueurs.

2. En raison de l'absence d'une législation spécifique dans votre système, envisagez-vous d'adopter une loi spécifique sur ce comportement à l'avenir ?

Le système belge tel qu'il est prévu actuellement en ce qui concerne la manipulation des résultats sportifs fonctionne de façon satisfaisante. Aucune initiative législative n'est envisagée à l'heure actuelle. En outre, des évènements non sportifs et liés à des paris peuvent être confrontés à de telles manipulations de résultat, une disposition spécifique serait alors également nécessaire pour ces évènements.

2. S'il y a déjà eu dans votre pays des enquêtes sur des cas de manipulation de résultats sportifs, pourriez-vous s'il vous plaît fournir toute information pertinente sur la façon dont les organes d'application de la loi (police, procureurs et tribunaux) se sont occupé de tels cas (les enquêtes ont-elles été couronnées de succès, les suspects ont-ils été identifiés et poursuivis, les sanctions pénales et administratives ont-elles été appliquées)?

Tout comme certains autres pays, la Belgique a été secouée ces dernières années par quelques scandales de corruption et de paris illégaux dans le monde du sport et du football en particulier. Le sport brasse beaucoup d'argent et il paraît évident de considérer que le sport non plus ne peut échapper à différentes formes de criminalité telles que la corruption, le blanchiment ou la fraude fiscale.[49]

Le parquet fédéral, qui centralise les dossiers en matière de fraude dans le football, examine actuellement deux affaires qui l'une et l'autre sont liées à la manipulation de paris.[50]

Dans 'l'affaire Yé', 16 personnes devront rendre des comptes devant le tribunal correctionnel.[51] Dans le cadre de cette affaire, des joueurs et des entraîneurs sont accusés d'avoir reçu en 2005 de l'argent de la mafia chinoise du jeu. L'objectif de ces versements était d'influencer les résultats de matchs de manière à ce que des bénéfices importants puissent être engrangés en pariant sur ces résultats. La chambre du conseil de Bruxelles examine cette affaire le 13 décembre en vue du renvoi de celle-ci devant le tribunal correctionnel. Dans la mesure où cette affaire n'a pas encore été

[49] Voyez à cet égard notamment une étude sur la corruption dans le sport réalisée en 2008 par Transparancy International. Transparancy International, Working Paper, edition 3-2009, http://www.transparency.org/publications/publications/working_papers/wp_03_2009_sport_and_corruption_9_september_2009.

[50] Voyez le mail que le parquet fédéral a adressé le 6 décembre 2011 au service de la politique criminelle du SPF Justice.

[51] Voyez par exemple: http://www.hbvl.be/nieuws/binnenland/aid950358/onderzoek-zaak-ye-na-vijf-jaar-klaar.aspx

examinée sur le fond par le juge du fond et étant donné le caractère secret de l'instruction préparatoire en Belgique, il n'est pas possible de procéder à une analyse de la manière dont la police et la justice ont procédé dans cette affaire.

La seconde affaire, dite 'l'affaire Namur', illustre que des enquêtes menées à l'étranger peuvent parfois avoir des ramifications en Belgique. Une enquête initiée par le parquet dans la ville allemande de Bochum a révélé que le résultat final de 17 matchs de football de la deuxième division belge disputés en 2009 avait été falsifié.[52] Cette affaire se trouve au stade de l'information et il n'est dès lors pas encore possible de préciser l'action de la police et de la justice dans ce dossier.

Ces affaires ont engendré en Belgique une attention accrue de la part des autorités politiques[53], en particulier des ministres de la Justice et de l'Intérieur, pour ce phénomène.

Ainsi, un point de contact (formulaire) 'fraude football' a été[54] créé auprès de la police fédérale. Ce point de contact en matière de fraude dans le football a pour missions :

- de permettre à des personnes disposant d'informations concernant une fraude présumée dans le milieu du football de les communiquer à un guichet central, même de façon anonyme ;
- de 'visualiser' le phénomène de la fraude dans le football à l'intention des autorités et organisations qui prennent en charge l'organisation de matchs de football ;
- d'en arriver à un contrôle plus effectif et plus efficace de la corruption et des paris engagés sur des matchs de football grâce à un meilleur fonctionnement des différents acteurs concernés et à une meilleure collaboration entre ceux-ci ;
- d'offrir la possibilité d'une meilleure lutte (à la fois préventive et répressive) contre cette fraude, en mettant son savoir-faire à disposition.

Ce point de contact a mis en branle une dynamique de collaboration entre la justice, la police et l'Union belge de football. C'est un *assist* idéal pour tâter le terrain, établir une 'cartographie' du milieu des paris, développer une expertise, se concerter et dessiner ensemble les contours d'une approche préventive et réactive mûrement réfléchie.[55]

Cette dynamique se concrétise également par la mise en place d'un point de contact national et international auprès du ministère public belge (au sein du parquet fédéral[56]), où un magistrat est chargé de rassembler et traiter les plaintes.[57]

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[52] Voyez par exemple: http://www.demorgen.be/dm/nl/998/Voetbal/article/detail/1059093/2010/01/26/Federaal-parket-moeit-zich-met-gokfraude-bij-Namen.dhtml

[53] Voir également : Proposition de loi visant à organiser un meilleur contrôle de la corruption et des paris sur les matchs de football, déposée par 6 sénateurs belges en février 2009, Sénat de Belgique, session 2008-2009, 20 février 2009, doc. n° 4-1191/1.

[54] Joignable via le numéro de téléphone 0800/44.442 ou www. fraudefootball.be. Voir également : le mail que le parquet fédéral a adressé le 6 décembre 2011 au service de la politique criminelle du SPF Justice.

[55] Inforevue Police intégrée, 04/2010, p. 28.

[56] La fraude dans le cadre des paris sur les matchs de football revêt une dimension internationale et dépasse les frontières d'un arrondissement judiciaire. Le caractère transfrontalier du phénomène justifie une approche au niveau fédéral

[57] Inforevue Police intégrée, 04/2010, p. 27.

Auprès de la police également (au sein de la Direction de la lutte contre la criminalité économique et financière, office central de répression de la corruption), un officier a été désigné pour coordonner la lutte contre la fraude dans le football.[58]

Il importe de signaler que le parquet fédéral de l'Union belge de football est également habilité à prendre certaines mesures sportives ou disciplinaires à l'encontre de clubs ou de joueurs. Cela répond à l'exigence de pouvoir bondir rapidement sur la balle en matière sportive, tandis qu'une enquête pénale et l'épuisement des procédures légales sont souvent un travail de longue haleine.

Informations additionnelles :

1. En Belgique il y a une disposition spécifique en particulier l'article 4, §3 de la loi sur les jeux de hasard : « § 3. Il est interdit à quiconque de participer à tout jeu de hasard si l'intéressé peut avoir une influence directe sur son résultat. »

2. Le problème de la fraude dans le sport ne peut pas être resolu par des initiatives privées, mais doit être traité par les autorités publiques. « Self regulation » n'est pas un outil efficace dans le combat contre la fraude. La Cour de Cassation confirme ce point de vue dans son arrêt du 30 mai 2011 (ch. Réun) : « Une a.s.b.l. qui, comme le Vlaams Doping Tribunaal, n'exerce un pouvoir disciplinaire qu'à l'égard des sportifs d'elites affiliés à une fédération qui lui a confié la tâche de les sanctionner disciplinairement, ne dispose pas de la compétence de prendre des décision obligatoires à l'égard des tiers en ne peut donc être considérée comme une autorité administrative au sens de l'article 14 des lois coordonnées sur le Conseil d'Etat. » (Cass., 30 mai 2011, J.T., 2012, n°6464, 71.)

3. Finalement la Commission des jeux de hasard est demanderesse pour la création d'une infraction de fraude dans le sport.

[58] Inforevue Police intégrée, 04/2010, p. 28.

Bosnia and Herzegovina / Bosnie-Herzégovine

1. Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results[59]?

   1.1. If yes:
   1. Is that conduct subject to criminal, or administrative, or any other legal sanction?
   2. Could you please attach the text of the provision(s) which provides for such a conduct (where available please attach an English or French text)

   1.2. If not:
   1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?
   2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future?

Manipulating sports results has not been covered by criminal legislation in Bosnia and Herzegovina.

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

There are no available data on practical cases.

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?

[59] You could consider the definition of "manipulation of sports results" as contained in the Appendix to the Recommendation CM/Rec(2011)10 adopted by the Committee of Ministers on 28 September 2011 at the 1122nd meeting of the Ministers' Deputies. Specifically, it stated that "the expression "manipulation of sports results" covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition."

Bulgaria / Bulgarie

1. Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results[60]?

   1.1. If yes: 1. Is that conduct subject to criminal, or administrative, or any other legal sanction?

Following the amendments to the Bulgarian Criminal Code adopted by the National Assembly on 21 July 2011, the conduct of manipulating sport results is subject to criminal sanctions. The amendments were published in State Gazette N 60 of 5 August 2011.

2. Could you please attach the text of the provision(s) which provides for such a conduct (where available please attach an English or French text)

The English text of the above amendments to the Criminal Code is attached below.

   1.2. If not: 1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?

2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future?

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?

Following the entry into force of the above amendments, there is no information about any investigations in cases of manipulating sport results (i.e. in the period 09.08.2011 – 20.01.2012).

Attachment

Extracts of the Bulgarian Criminal Code as amended in July 2011

Bulgarian Criminal Code

Chapter Eight "A"

(New, SG No. 60/2011)

CRIMES AGAINST SPORTS

Article 307b. (New, SG No. 60/2011) Anyone who-through the use of force, fraud, threat, or in another unlawful way-persuades another person to influence the development or outcome of a sports competition

[60] You could consider the definition of "manipulation of sports results" as contained in the Appendix to the Recommendation CM/Rec(2011)10 adopted by the Committee of Ministers on 28 September 2011 at the 1122nd meeting of the Ministers' Deputies. Specifically, it stated that "the expression "manipulation of sports results" covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition."

administered by a sports organisation shall be punished with imprisonment from one to six years and a fine ranging from BGN 1,000 to 10,000, unless the act constitutes a more severe crime.

Article 307c. (New, SG No. 60/2011) (1) Anyone who promises, offers, or grants any undue advantage to another in order to influence or for having influenced the development or outcome of a sports competition administered by a sports organisation shall be punished with imprisonment from one to six years and a fine ranging from BGN 5,000 to 15,000.

(2) The punishment under Paragraph 1 shall also be imposed on anyone who requests or accepts any undue advantage, or accepts offer or promise of an advantage, in order to influence or for having influenced the development or outcome of a sports competition or when, with the consent of that person, the advantaged is offered, promised, or given to another.

(3) Anyone who acts as an intermediary for the commitment of an act under Paragraphs 1 and 2 shall be punished with imprisonment for up to three years and a fine of maximum BGN 5,000.

(4) The punishment under Paragraph 1 shall also be imposed on anyone who provides for or organises the advantage offering or granting.

(5) Offenders shall be punished pursuant to the conditions of Article 55 (*mitigating circumstances*) if they voluntarily inform the competent authority about any crime committed under Paragraphs 1-4.

Article 307d. (New, SG No. 60/2011) The punishment shall be imprisonment from two to eight years and a fine ranging from BGN 10,000 to 20,000 when the act under Article 307b or Article 307c is committed:

1. in respect of a sports competition participant who is under 18 years of age;

2. in respect of two (or more) sports competition participants;

3. in respect of, or by a member of a sports organisation's managing or control body, a referee, a delegate or anyone acting while discharging his duties or function;

4. repeatedly.

(2) The punishment shall be imprisonment from two to ten years and a fine ranging from BGN 15,000 to 30,000 when the act under Article 307b or Article 307c:

1. is committed by a person acting upon an order or decision of an organised crime group.

2. is committed in the context of dangerous recidivism;

3. is a particularly grave offence;

4. concerns a competition included in a game of chance that involves betting on the development or outcome of sports events.

Article 307e. (New, SG No. 60/2011) (1) In the cases under Article 307b, Article 307c and Article 307d, the competent court may order deprivation of rights under Article 37(1)(6) and (7).

(2) In the cases under Article 307d, the court may also order that half of the assets, or less, of the guilty person be confiscated.

Article 307f. (New, SG No. 60/2011) The object of any crime falling within the scope of this chapter shall be forfeited in favour of the state, and when this object is not available or is expropriated, it is the relevant monetary equivalent that shall be forfeited.

———————

Cyprus / Chypre

Answer 1

1.1.1. Yes, under Law 41 of 1969 which provides the Purposes, Objectives, Organisation and Operation of the Cyprus Athletes Association, anyone who attempts to manipulate sports results is guilty of an offence.

1.1.2. Under Article 24 of the above mentioned Law:

(1) Anyone who

(a) Demands or accepts a gift, provision or benefit of any kind or a promise for these, with the purpose or under the promise of alteration of the result of any team or individual sport, against or in favour of any sports club,

(b) Provides, gives or promises a gift, provision or benefit of any kind (i) to any athlete or to any congenial person or relative for the purpose or for the receipt of a promise as mentioned in paragraph (a), (ii) to any club or its board of directors or to any of its members or to any member of the club or to any person exercising in a club in order to achieve a result in favour of this club or at the expense of a rival or rivals of this club, is guilty of an offence and may be convicted to imprisonment not exceeding 2 years or to a fine not exceeding €1.708 or both.

(2) In the case that due to the above actions the intended result is achieved, the responsible person is subject to imprisonment not exceeding 3 years or to a fine not exceeding €2.562 or both.

(3) No criminal action for any criminal offence under article 24 may be taken without the consent of the Attorney General.

Answer 2

Currently there are some investigations in progress regarding such cases. The investigations are so far successful, although the cases have not yet been presented before the Court.

Czech Republic / République tchèque

1. Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results[61]?

No.

1.1. If yes:
1. Is that conduct subject to criminal, or administrative, or any other legal sanction?
2. Could you please attach the text of the provision(s) which provides for such a conduct (where available please attach an English or French text)

1.2. If not:
1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?

   Yes, conduct of manipulating sport results falls under general bribery provisions. There is already a substantial case law on corruption in sports.
2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future?

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?

There were cases of manipulating sport results by bribing the referee of several football matches. These referees and those paying bribes have been prosecuted for corruption offences and criminal sanctions were applied.

[61] You could consider the definition of "manipulation of sports results" as contained in the Appendix to the Recommendation CM/Rec(2011)10 adopted by the Committee of Ministers on 28 September 2011 at the 1122nd meeting of the Ministers' Deputies. Specifically, it stated that "the expression "manipulation of sports results" covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition."

Denmark / Danemark

The Questionnaire

Part 1 – GENERAL LAW

I- Which legal provisions in your country could be used to combat manipulation of sports results?

1. General law

   Civil law ☒

   Criminal law (Corruption, money laundering, financial fraud, etc) ☒

   Intellectual property law ☐

   Other ☐*(please specify)*

Criminal law

- The Danish Criminal Code section 279, 285, 286, 290. See https://www.retsinformation.dk/Forms/R0710.aspx?id=133530 for full Danish text, see below (section II) for relevant excerpts in English.

Civil law

- The Act on Gaming (which has been passed by the Danish Parliament and is expected to enter into force on January 1, 2012), section 11(4). See http://www.skat.dk/SKAT.aspx?oId=1905223&vId=0 for full English text. Please note that the Danish version of the document is the only applicable and authentic version.

- Draft executive order on land based betting (has *not* yet entered into force), section 7. See http://ec.europa.eu/enterprise/tris/pisa/app/search/index.cfm?fuseaction=getdraft&inum=1693591 for Danish draft text.

- Draft executive order on online betting (has *not* yet entered into force), section 22. See http://ec.europa.eu/enterprise/tris/pisa/app/search/index.cfm?fuseaction=getdraft&inum=1693657 for Danish draft text.

2. Specific law (with specific provisions on the manipulation of sports results)

   Civil law ☒

   Criminal law ☐

   Other ☐*(please specify)*

II- Under this framework, please list the texts and references of national provisions that cover manipulation of sports results (in case legislation is in preparation, please refer to the preparatory texts, drafts debates, etc.)

Criminal law

Danish legislation does not entail a specific offence for manipulation of sports results.

Manipulation of sports results may, however, be covered by Section 279 of the Danish Criminal Code.

It reads as follows:

> *"**279.** Any person who, for the purpose of obtaining for himself or for others an unlawful gain, by unlawfully bringing about, corroborating or exploiting a mistake, induces any person to do or omit to do an act which involves the loss of property for the deceived person or for others affected by the act or omission, shall be guilty of fraud."*

In order for match fixing to be covered by Section 279 it is required – inter alia – that the act involves the loss of property.

Fraud is punishable by imprisonment for any term not exceeding one year and six months (Section 285). Where the offences are of a particularly aggravated nature, especially due to the manner in which they were committed, or because they were committed by several persons in association, or due to the magnitude of the obtained or intended gain, or where a large number of offences have been committed, the penalty may be raised to imprisonment for any term not exceeding eight years (Section 286 (2)).

Money laundering is covered by Section 290 of the Criminal Code, which reads as follows:

> *"**290. (1)** A person who unlawfully accepts or acquires for himself or for others a share in proceeds which have been obtained by a violation of the law, or unlawfully assists, by subsequently concealing, keeping, transporting, helping with the disposal of or taking part in a similar manner, in securing for another the proceeds of a criminal offence, shall be guilty of receiving stolen goods and liable to a fine or imprisonment for any term not exceeding one year and six months.*
> ***(2)** When a person has received stolen goods acting in a particularly aggravated way, especially due to the commercial nature of the offence, or due to the extent of the obtained or intended gain, or where a large number of offences have been committed, the penalty may be increased to imprisonment for any term not exceeding six years.*
> ***(3)** Punishment under this provision shall not be imposed on a person, who accepts proceeds for ordinary subsistence from family members or a cohabitant, or a person who accepts proceeds as normal payment for ordinary consumer goods, articles for everyday use, or services."*

All types of property are covered by Section 290 (profits which are obtained by a punishable violation of the law). The only requirement is that the proceeds can be identified as such, being the direct profits from the crime or surrogates that can be identified or income from such assets.

As money laundering is a separate crime, it is not required that there is a conviction for the predicate offence or that the predicate offence has been identified.

The money laundering of profits which are obtained from an (unlawful) act of match fixing may thereby be punishable by section 290 if the proceeds have been obtained from an act of fraud covered by Section 279.

Civil law

The above mentioned Act on Gaming, section 11(4), states that:

"The Minister of Taxation may lay down rules to the effect that betting on certain categories of events shall not be permitted."

In the explanatory notes to the Act (see http://www.skat.dk/SKAT.aspx?oId=1905230), it is stated that:

"The proposed subsection (4) authorises the Minister of Taxation to lay down rules to prohibit betting on certain categories of events. Such rules are intended to limit the risk of so-called match fixing, i.e. sporting events where the result has been agreed in advance.

The categories of events where the risk of match fixing is the greatest are e.g.:

- *Betting where one single sportsman or sportswoman has total control of the outcome of the bet and where the bets placed by the players are only of little or no importance in so far as the sport is concerned;*

- *Events where a few sportsmen or the referee may decide the outcome of the bet without it having any noticeable effect on the match as a sporting match;*

- *Betting on matches in low-ranking leagues;*

- *Betting provided on youth sport.*

In so far as possible the rules in this regard must be laid down before the first licences to provide betting are issued so that the holders of the licences are restricted in the categories of events on which bets may be placed. Once the Act has come into force, the provision must be administered respecting the activities of the holders of the licences and must not go beyond what is necessary to attain the object of the provision."

The provision in section 11(4) is intended to be implemented through the executive orders on land based betting and online betting referred to above.

Chapter 4 of the draft executive order on land based betting deals with "Match-fixing and employees' participation in gambling". Section 7, 8 and 9 read as follows (NOTE: unofficial translation):

"7. The license holder [according to the Act on Gaming betting companies must hold a license to legally operate in Denmark] must take action to ensure the reduction of the risk of match-fixing in bets and must refuse to receive money on bets for which there is a reasonable suspicion of match-fixing.
8. The license holder must ensure that employees of the license holder, suppliers of the license holder, and other persons related to the development of the bets offered by the license holder, do not have access to participate in the bets offered by the licence holder.
9. The license holder is not allowed to offer bets on sporting events reserved for persons under the age of 18."

In the same way, chapter 9 of the draft executive order on online betting deals with "Match-fixing and employees' participation in gambling". Section 22 and 23 read as follows (NOTE: unofficial translation):

"22. The license holder must take action to ensure the reduction of the risk of match-fixing in bets and must refuse to receive money on bets for which there is a reasonable suspicion of match-fixing.

23. The license holder is not allowed to offer bets on sporting events reserved for persons under the age of 18."

III- In relation to these provisions, what are the infringing acts?

Please see the answer to section II

IV- What are the sanctions?

Please see the answer to section II

Part 2 – CASE LAW

V- Please list the cases (already solved or under investigation) related to manipulation of sports results

Neither the Danish Public Prosecutor for Serious Economic Crime, the Danish Gambling Authority nor The National Olympic Committee and Sports Confederation of Denmark have knowledge of any case law in regards to match fixing.

VI- Please list the general court decisions or decisions of sports organisations related to manipulation of sports results

Please see the answer to section V. In addition, it can be noted that The National Olympic Committee and Sports Confederation of Denmark (DIF) has stated that no disciplinary sanctions related to match-fixing have been carried out within the realm of DIF. In 2010 DIF investigated a suspected case of match-fixing in one of the lower football leagues, but the investigations did not bring DIF to sanction neither players nor clubs.

Part 3– THE EFFECTIVENESS OF LEGAL FRAMEWORK

VII- What are the obstacles to prosecute illegal activities related to manipulation of sports results?

Since there have been no known attempts in Denmark to prosecute illegal activities related to manipulation of sports results, there has been no experience with obstacles to such prosecutions.

VIII- In your opinion, the introduction of specific offence for manipulation of sports results in your national legislation is appropriate to combat manipulation of sports results?

Yes ☐ No ☐

Why?

At this point in time, there is no plausible ground to deem the existing and planned legislation inadequate in the fight against match-fixing. It has not at this point in time been documented that the introduction of specific legislation targeted at match-fixing will enhance the opportunities of combating match-fixing in Denmark.

IX- Are any actions at European level necessary in this field and if yes, which actions do you think are necessary?

The first focus of EU activities in this field should be to ensure that knowledge of best practices is shared between Member States and other stakeholders. This goes for both the design and implementation of national legal frameworks applicable to match-fixing, for cooperation between relevant stakeholders at national and international level and for the design of preventive measures.

Since match-fixing is by nature an international problem, another relevant focus for EU-level action would be for the Commission and Members States to include, when relevant, issues relating to match-fixing in bilateral contacts and relations with relevant third countries, that is, countries outside of the EU.

Estonia / Estonie

1. Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results[1]?

   No, we don´t have any specific regulation providing punishment of the manipulation of sport results.

- If Not - Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?

  In certain specific cases it is theoretically possible to prosecute the manipulation of sport results as fraud under the Penal Code.

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?

- **There have not been any investigations in cases of manipulating sport results in Estonia. Therefore we don´t have any experience or best practices to share regarding investigation or prosecution of cases of manipulating sport results.**

Finland / Finlande

1. Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results?

No.

1.2. If not: 1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?

Yes.

In Finland match-fixing and manipulation of sports results come under general criminal law. One of the principal types of crime in this context is fraud (Criminal Code, Chapter 36 Sections 1-2), under which betting and winning money on manipulated results can constitute a crime. Deceiving another person for monetary gain and causing economic loss constitute a fraud. An attempt is also punishable. If the fraud involves the seeking of considerable financial benefit, as may be the case in match-fixing, the act may constitute an aggravated fraud (Criminal Code, 36:2).

Another applicable type of crime is bribery in business (Criminal Code, 30:7). For example, an offer of monetary reward to a player for action designed to lose a match may constitute bribery in business. If an offer of money with this intent is a accepted, it may constitute acceptance of a bribe in business (Criminal Code, 30:8).

Quite recently (1 Oct. 2011), amendments regarding an aggravated form of these crimes came into force (Criminal Code, 30:7a and 8a).

Bribery in the private sector has been to the fore in the international community in recent years, which has also influenced the contents of Finnish statutes and regulation.

The provisions on corporate criminal liability apply to bribery in business and acceptance of a bribe in business (Criminal Code, 30:13).

The sanctions for fraud and bribery and acceptance of a bribe in business range from a fine to two years' imprisonment and for an aggravated fraud, bribery and acceptance of a bribe up to four years' imprisonment. In a case of several aggravated frauds, the maximum punishment may be as severe as seven years' imprisonment.

Match-fixing and manipulation of results may also lead to a claim for substantial compensation or forfeiture of illegal benefits.

Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future?

No. The statutes referred to above have been applied to sports-related fraud and bribery in judicial practice and offenders have been punished. In the Finnish legal practice there have not been loopholes in the legislation in regard of sports-related offences that would warrant legislative measures. Similarly, the scales of sanctions allow an appropriate and robust response to criminal acts.

Therefore, we see no substantive reasons for adopting a specific criminal provision on manipulating sports results. The Finnish criminal law system is not based on many specific criminal provisions in different spheres of life but we believe on more general criminal provisions which cover different spheres of life.

It is clear that match-fixing and result manipulation may often involve difficult problems with evidence. These are not, however, generally helped by means of new provisions on sanctions.

Measures are being taken at both the European and international levels to step up legal aid. Similarly, regulation on money laundering and organised crime, among others, has been developed.

In Finland, recent amendments to the lotteries legislation were accompanied by statutory definitions of betting and gambling crimes (Criminal Code, 17:16a).

Even though sports-related crime is not separately criminalised in Finland, we see that our national legislation has so far fit the purpose. Most recently the matter was looked into by the Ministry of Justice in 2006.

The Ministry of Education and Culture aims to conduct a review of the national legislation and its adequacy for purpose in terms of sports-related offences by the end of 2012. We also actively participate both in the process launched by the Council of Europe and in the cooperation to fight match-fixing initiated by the European Union.

Legislation cannot be the main means of combating sports-related fraud and result manipulation. At best, a criminalisation of sports-related fraudulent activity will only influence part of the causes behind fraudulent betting and gambling.

<u>If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?</u>

The statutes referred to under 1.II have been applied to sports-related fraud and bribery in judicial practice and offenders have been punished. Even sentences of imprisonment have been imposed.

France

1. Existe-t-il, dans votre législation nationale, dans vos règlements et dans votre jurisprudence, une ou plusieurs disposition(s) spécifique(s) quant à la manipulation des résultats sportifs[62] ?

Non, il n'existe pas dans la législation pénale française de disposition spécifique quant à la manipulation des résultats sportifs.

1.1. Si oui: 1. Est-ce que ce comportement est soumis à une sanction pénale ou administrative, ou à toute autre sanction juridique ?

. 2. Pouvez-vous, s'il vous plaît, joindre le texte de(s) la disposition(s) qui traite(nt) de ce comportement (si disponible, joignez un texte en anglais ou en français s'il vous plaît).

1.2. Si non: 1. Est-ce que selon votre législation, la manipulation de résultats sportifs (ou certaines formes de ce comportement) relève d'une ou plusieurs infractions (pénales, administratives ou autres) ?

La manipulation de résultats sportifs peut relever de différentes infractions pénales.

Le droit pénal en vigueur permet d'appréhender et de sanctionner les comportements frauduleux les plus graves, relevant du sport professionnel, par le biais de qualifications telles que la corruption, l'escroquerie ou le blanchiment.

Plusieurs textes sont susceptibles de s'appliquer aux hypothèses de corruption commises au cours de manifestations sportives et au premier chef, le délit de l'article 445-1 du Code pénal réprimant la corruption active de personnes privées (et 445-2 pour la corruption passive).

L'article 445-1 vise de manière générale toute « personne qui, sans être dépositaire de l'autorité publique, ni chargée d'une mission de service public (…) *exerce, dans le cadre d'une activité professionnelle ou sociale*, *une fonction de direction ou un travail*, *pour une personne physique ou morale ou pour un organisme quelconque* ».

Cette définition, si on la cantonne au sport professionnel, peut recouvrir l'essentiel des acteurs des manifestations sportives, c'est à dire les organisateurs, les sélectionneurs, les agents sportifs, les arbitres, les dirigeants des fédérations sportives et les sportifs liés juridiquement aux organisateurs.

2. En raison de l'absence d'une législation spécifique dans votre système, envisagez-vous d'adopter une loi spécifique sur ce comportement à l'avenir ?

Une réflexion interministérielle est toujours en cours sur l'opportunité de la création d'un délit spécifique en matière de corruption sportive.

2. S'il y a déjà eu dans votre pays des enquêtes sur des cas de manipulation de résultats sportifs, pourriez-vous s'il vous plaît fournir toute information pertinente sur la façon dont les organes d'application de la loi (police, procureurs et tribunaux) se sont occupé de tels cas (les enquêtes ont-elles été couronnées de succès, les suspects ont-ils été identifiés et poursuivis, les sanctions pénales et administratives ont-elles été appliquées)?

[62] Vous pourriez envisager la définition de «manipulation de résultats sportifs » figurant dans l'annexe à la Recommandation CM/ / Rec (2011) 10 adoptée par le Comité des Ministres le 28 septembre 2011, lors de la 1122e réunion des Délégués des Ministres. Plus précisément, il a été déclaré que : «l'expression "manipulation des résultats sportifs" désigne un arrangement sur une modification irrégulière du déroulement ou du résultat d'une compétition sportive ou d'un de ses événements en particulier (par exemple match, course…), afin d'obtenir un avantage pour soi-même ou pour d'autres et de supprimer tout ou partie de l'incertitude normalement liée aux résultats d'une compétition. »

Dans l'affaire dite OM-VA (Olympique de Marseille – Valenciennes), deux joueurs avaient accepté de faciliter la victoire de Marseille en échange d'une somme d'argent (pendant le match de championnat remporté 1 à 0 le 20 mai 1993 par l'Olympique de Marseille sur le terrain de l'US Valenciennes-Anzi).

Cette affaire s'est conclue par la condamnation définitive du président de l'OM sur le fondement du délit de corruption active de salarié au titre de l'ancien article 152-6 du code du travail, effectivement abrogé par la loi du 4 juillet 2005, mais désormais appréhendé de manière plus large encore par l'article 445-1 du code pénal (puisqu'il n'est plus indispensable de se trouver dans une entreprise et d'agir à l'insu de son employeur).

Le dossier a été jugé par le tribunal correctionnel de Valenciennes courant mars 1995.

Suivant jugement en date du 15 mai 1995, le tribunal a notamment condamné Bernard Tapie, président du club de l'OM au moment des faits, à la peine de deux ans d'emprisonnement, dont un ferme.

Bernard Tapie a fait appel.

Suivant arrêt de la cour d'appel de Douai rendu courant novembre 1995, M TAPIE a été condamné à deux ans de prison dont 16 mois avec sursis, 20 000 francs d'amende et trois ans d'inéligibilité.

Georgia / Géorgie

1. **Question:** Existe-t-il, dans votre législation nationale, dans vos règlements et dans votre jurisprudence, une ou plusieurs disposition(s) spécifique(s) quant à la manipulation des résultats sportifs?

   Réponse: **Oui**

   1.1. Si oui: 1. Est-ce que ce comportement est soumis à une sanction pénale ou administrative, ou à toute autre sanction juridique ?

   Réponse: **L'article 203 du code pénal de la Géorgie prévoit les sanctions pénales pour la corruption d'un participant ou d'une organisation de compétition sportive professionnelle ou de concours d'amusement commercial.**

   . 2. Pouvez-vous, s'il vous plaît, joindre le texte de(s) la disposition(s) qui traite(nt) de ce comportement (si disponible, joignez un texte en anglais ou en français s'il vous plaît).

Extract from the Criminal Code of Georgia

Article 203. Bribing of a Participant or Organisation of Professional Sports Competition or Commercial-entertainment Contest

1. Bribing a participant, a referee, a coach, a leader of a team or an organisation of professional sports competition, as well as an organiser or a member of jury of a commercial-entertainment contest for the purpose of influencing results of the competition and contest,
- shall be punished by a fine or socially useful labour for a term from one hundred and twenty to one hundred and eighty hours or correctional labour for a term from six months to one year or imprisonment for a term of up to one year.
2. The same offence committed repeatedly,
- shall be punished by restriction of liberty for a term of up to three years or imprisonment for a term from two to five years.
3. The offence referred to in the first and second paragraphs of this article committed by an organised group,
- shall be punished by imprisonment for a term from four to six years.
4. Illegal receipt of money, stock or other property or using property services by a participant of a professional sports competition for the purpose of influencing the results of the competition or contest,
- shall be punished by imprisonment for a term of up to two years, with deprivation of the right to hold office or pursue an activity for a term of up to three years.
5. Illegal receipt of money, stock or other property or using property services by a referee, a coach, a leader of a team or organisation of professional sports competition, as well as by an organiser or a member of jury of a commercial-entertainment contest for the purpose of influencing results of the competition or contest,
- shall be punished by a fine, with deprivation of the right to hold office or pursue an activity for a term of up to three years or imprisonment for a term of up to one year.

Note: A person who voluntarily declares to authorities of having transferred money, stock or any other property or rendered property services to any of the persons referred to in the first paragraph of this article, shall be discharged from criminal liability.

1.2. Si non: 1. Est-ce que selon votre législation, la manipulation de résultats sportifs (ou certaines formes de ce comportement) relève d'une ou plusieurs infractions (pénales, administratives ou autres) ?

Réponse: ----------

2. En raison de l'absence d'une législation spécifique dans votre système, envisagez-vous d'adopter une loi spécifique sur ce comportement à l'avenir ?

Réponse: ----------

2. S'il y a déjà eu dans votre pays des enquêtes sur des cas de manipulation de résultats sportifs, pourriez-vous s'il vous plaît fournir toute information pertinente sur la façon dont les organes d'application de la loi (police, procureurs et tribunaux) se sont occupé de tels cas (les enquêtes ont-elles été couronnées de succès, les suspects ont-ils été identifiés et poursuivis, les sanctions pénales et administratives ont-elles été appliquées)?

Réponse: L'information non disponible

Germany / Allemagne

Question 1:

No, within the German legislation, regulations and case law, there is no specific provision on the conduct of manipulating sport results.

Question 1.2.1.:

The punishable constellations of fixing the results of sporting fixtures are already largely covered by the elements of the offence of fraud under section 263 of the Criminal Code [Strafgesetzbuch]. This offence incurs the penalty of a criminal fine or of imprisonment for up to five years. If the perpetrator is acting commercially or as a member of a gang, the offence incurs the penalty of imprisonment of six months to ten years.

Question 1.2.2.:

The national criminal prosecution authorities thus have an adequate set of instruments available to them that make it possible to prosecute and punish any such illegal acts. Therefore, no special regulation is necessary in this area and is also not envisaged.

Question 2:

Please refer to document attached.

In 2008, Bochum public prosecution office instituted investigation proceedings in a case which was later reported in the German national press and the European press as the “largest European betting scandal”. The investigation proceedings concerned pacts between sportspersons and the accused persons to influence the results of contests so that they concurred with intention of individuals who desired to place bets on the predictable outcome.

An office of the Bochum police, which was responsible for combating organised crime and, in particular, for investigating an individual from the red light milieu in the Ruhr area, came to the conclusion in the course of telecommunications interception measures that the money obtained by the perpetrators was to be laundered and maximised by means of football betting. This line of inquiry was intensively pursued further and, in spring 2009, it was clear that they were not dealing with an individual acting alone but that he was part of a group that was systematically exercising influence on athletes to manipulate them in order to obtain the desired outcome for betting purposes. The most powerful member of this group in economic terms was discovered to be Ante S. from Berlin, who was later convicted and had already been found guilty of fraud to the detriment of betting operators in 2005 by Berlin Regional Court and had been sentenced to imprisonment for two years and nine months. Back when the offence occurred, Ante S. had exerted influence on the premier league referee Robert Hoyzer and induced him *inter alia* to skew the game between the third league club *SC Paderborn* and the premier league club *Hamburger SV* in the competition for the federal German football cup such that the underdog won the game.

In Germany, it is not the manipulation of football matches that is a punishable act, but the placing of a bet on the outcome based on the fixing of the game, which is deemed to constitute fraud to the detriment of the bookmaker. The Federal Court of Justice has, in this context, deemed the actions of the perpetrator to constitute active deception of the person or entity accepting the bet, because the perpetrator is, in contravention of his duty, concealing the fact that the sporting event to which the bet relates has been manipulated. The bookmaker gives odds based on the deception but which are no longer equal to the amount of the bet placed and he already suffered impairment as a result of this. Accordingly, it could not be proven that a game was directly influenced by a perpetrator, i.e. that the goalkeeper intentionally “missed” reaching for the ball but had in fact given a serious undertaking to influence the course of the match. As a result, it is considerably easier to prove commission of the offence.

Since those involved were organised as a group, it was necessary to establish whether this constituted a gang or a criminal organisation. This leads to different consequences in that offences committed by a gang incur a minimum penalty of imprisonment for one year and are thus categorised as serious criminal offences (*Vergehen*), whilst offences committed by a criminal organisation, that fall into the category of less-serious criminal offence (*Vergehen*), do not incur this minimum penalty. Ultimately it was possible to prove that the accused persons had established a Europe-wide network and worked together, dividing up their activities

among them, and as a result Bochum Regional Court did indeed find them guilty of fraud committed acting as a gang.

In addition, bets were placed with bookmakers both in Germany and abroad, with private individuals and on betting machines. In this regard Bochum Regional Court ruled for the first time in one of these sets of proceedings that an act can constitute fraud not only when it is committed vis-à-vis a bookmaker as a natural person, but also when it is committed through the medium of betting machines or via the Internet.

The legal question also arose in connection with certain factual constellations as to what should happen if a bet is unsuccessful and the stake placed is lost in spite of a successful fixing agreement having been made. This could be, for example, a situation where a referee has been paid EUR 40,000 before the match commences for awarding at least two penalty kicks, but the course of the came had not allowed for such actions to be carried out. The bets placed thereon would thus all be lost. In such a scenario the Federal Court of Justice supposes that there has been a completed act of fraud and assumes the damage caused to be “impairment in terms of odds”. This means that the bookmaker wrongly gave too favourable odds, which he would not have done had he had known about the manipulation. This alone already caused him measureable damage through fraud, which is reflected in the potential profit.

Bochum Public Prosecution Office is currently pursuing investigations regarding 323 affected football matches and 347 participants in offences across the whole of Germany as well as in other European countries. Those involved in the offences are, and/or have been, resident in Turkey, Switzerland, Croatia, Austria, Belgium, Slovenia, Bosnia, Hungary, England, Holland, Ukraine, Slovakia, Montenegro, the Czech Republic and Germany. Those who come into consideration as participants in the offences include athletes as well as those who placed bets or represent bookmakers’ representatives.

There were also numerous transfers of funds made by participants in the offences, and these also had to be looked into. All in all, in the period 2008 to 2009, bets totalling EUR 13.9 million and net winnings amounting to EUR 8.1 million have been established, and payments to the perpetrators amounting to a total of EUR 15.6 million have been uncovered. In addition, it was established that payments totalling EUR 1.7 million had been made to athletes.

A detective squad responsible for combating organised crime in Bochum and comprising up to 20 members of staff was commissioned with the investigations. The members of the squad called the investigative commission the "cross ball god". The police officers’ tasks included covering 70 telephone interceptions in the period from December 2008 to November 2009. There were also three further public prosecutors involved who were responsible for dealing with the areas of mutual legal assistance and the confiscation of profits. The

investigation files currently encompass more than 15,000 sheets of paper. The transcription of the telephone interception alone comprises a further 88 binders.

Within the framework of the telephone interception, the calls that had to be evaluated included not only German calls but also those of the Dutch and Swiss authorities. The majority of the calls were conducted in Turkish or Croatian and were translated virtually simultaneously. For the duration of the covert investigations conducted over one year, efforts were made to avoid any “official” contact being made with other German police authorities. The investigating officers did, however, obtain the advice of an expert in betting matters in order to be in a position to understand the rules for Asian betting and evaluate the telephone interception appropriately. In addition, Bochum public prosecution office contacted UEFA in spring 2009 in order to gain their support.

Furthermore, the perpetrators used German national banks extremely rarely for their financial translations; instead, they approached foreign banks or made extensive use of cash transactions. This resulted from the fact that two of those persons who are now again accused had, in 2005, already been found guilty by Berlin Regional Court of fraud to the detriment of bookmakers and received terms of imprisonment, and had, as it were, "learned" from these proceedings. Thus it was possible to establish that betting gains from Asia were transferred to so-called "straw men" who held accounts in Austria and Croatia, so that they could then have the funds withdrawn in cash. Transfers of several hundred thousand Euro were not unusual. In fact, EUR 200,000 in cash was found on the convicted person Ivan P. and "frozen" when he was arrested on 19 November 2009. In the case of the convicted person Ante S the amount was EUR 1,200,000.

The investigations were then extended in spring 2009 from perpetrators in the Ruhr Region to persons in south Germany and in Berlin. The sporting events affected included football matches in Germany, Austria, Switzerland, Hungary, Slovenia, Croatia, Denmark, Albania, the Netherlands, Belgium and Bosnia, as well as international matches between national Under 21 teams and adult national teams, for example the World Cup 2010 qualifier between Liechtenstein and Finland, which took place on 9 September 2009, as well as Champions League matches and Europa League games. Games in the top European leagues such as the Austrian Bundesliga, the second German Bundesliga, the first Croatian league, the second Belgian league, the first Turkish league and the first Hungarian league were bought. In addition, a large number of matches in lower European leagues were affected. There was even one case of manipulation of a Canadian football game. In one of the teams involved, the manipulators were Croatian sportsmen. In this case, the bribe was deposited with relatives of the co-perpetrators in Croatia.

One thing that transpired to be problematic right from the beginning was keeping track of the bets placed by the members of the group of perpetrators, since they not only used the Internet but also had involved contact

persons in London and Graz and placed bets in Asia via these individuals, primarily in the Philippines and in China.

On 19 November 2011, the day of operations, there were a total of 18 arrests, 3 of which were made in Switzerland, the remaining 15 being made in Germany. In addition, approximately 50 apartments were searched for betting slips, data carriers and financial resources, and illegally procured gains were seized.

In the course of in some cases more than 50 interviews per perpetrator, the ringleaders of the group admitted their guilt. In addition, it was possible to obtain the individual betting slips from bookmakers by means of searches and voluntary surrender – as a result, precise evidence of commission of the acts could be obtained.

Ultimately there have already been 9 convictions handed down for fraud, with the maximum aggregate prison sentence in two cases constituting 5 years and 6 months on the charge of 24 counts of fraud committed on a commercial basis. The public prosecution office has filed appeals on points of law against three of the judgments; defence counsel has done so in every case.

There is still a long way to go before the investigations can be concluded. Bochum public prosecution office has submitted 50 individual requests for mutual legal assistance to other countries, and, due to reporting in various press publications, we have been contacted by third countries regarding mutual legal assistance in more than 20 cases. In some cases the requested states had difficulty subsuming the elements of fraud in respect of sporting bets under their own national law. After all, mutual legal assistance can only granted where the circumstances described also fulfil the elements of a criminal offence in the requested state. The circumstances of fraud committed through sports betting are currently subject to prosecution in a number of countries as money laundering; in Hungary, Finland and Croatia this comes under bribery offences; in Turkey and Italy it comes under the offence of supporting a criminal organisation, and in Slovenia under the offence of “prohibited acceptance of gifts”.

Greece / Grèce

Question 1

Article 132 of Law 2725/1999

1. Any person requiring or accepting bribes or other advantages or any other providing or promise thereof, in order to alter the result in favour or against sports club, groups of paid athletes or athletic public limited companies, in any team or individual sport that is going to be conducted, shall be punished with at least three months imprisonment and at least one million drachmas fine.(about 3000 euro).
2. The same penalty shall be imposed on every person that, under paragraph 1, offers, gives or promises gifts, advantages or any other providing to athletes, referees or administrative factor or any other person connected in any way with the athletes, the referee, the union, the groups of paid athletes or athletic public limited companies.
3. If the result intended by the offender actually occurred through the aforementioned criminal act, the offender is punished with at least six months imprisonment and at least two million drachmas fine. (about 6000 euro).
4. Apart from these sanctions, the persons committing offences of the aforementioned paragraphs are also punished with a disciplinary proceeding, according to the provisions of article 130, for breach of sportsmanship.
5. If the prosecuted for the criminal offence of paragraphs 1,2 and 3 of this article are athletes, coaches, trainers, administrative factors or members of sports clubs, members of groups of paid athletes or athletic public limited companies, a disciplinary proceeding is imposed by the competent disciplinary body of the relevant sports federation or by the relevant professional association to the team of association, to the groups of paid athletes or to the athletic public limited companies, in which the above persons belong.
This disciplinary proceeding is imposed either with points deduction in the grading table of the championship in progress or the forthcoming championship, in which they will participate, or by their downgrading to the next lower category. The disciplinary proceeding, under the aforementioned paragraphs, the prosecution and imposition of penalties is self-contained and independent from the criminal trial to which the offenders for the execution of the above offences are indicted.

The aforementioned paragraph 5, was added by paragraph 6, article 78 of Law 3057/2002 "Amendment and supplementation of Law 2725/ 1999, settlement of matters of the Ministry of Culture and other provisions".

Furthermore and with the same law, a new article (article 128) to the law 2725/1999 was added as follows:

The Head of Public Prosecutor's Office of Magistrate's Court of Athens, Piraeus and Thessaloniki appoints a public prosecutor responsible for sports. He attends to conduct a criminal prosecution for criminal offences, committed on the occasion of sports events or during these, and offences committed by persons who are involved in the administration of sports bodies in the performance of their competence or duties.

Question 2
In the Hellenic Republic there is currently a very significant case of manipulating sport results. Four former administrative factors of the 1st category of the football champion are in prison for manipulating sport results and for frauds. Four football teams have already been downgraded four categories and other 15 stakeholders are temporarily out of prison having paid huge amounts as a guarantee. The regular investigation is in progress and disciplinary sanctions have already been imposed to many teams and persons (exclusions, downgrading, fines etc).

Iceland / Islande

1. Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results?

No there are no specific provisions on the conduct of manipulating sport results within Icelandic legislation.

1.2. If not: 1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?

The conduct of manipulating sports results could, depending on circumstances, fall within enrichment offences according to Ch. XXVI. of the General Penal Code (GPC), for example Section 264 a. which describes active and passive bribery in the private sector (please find the GPC updated until 2004 here: http://eng.innanrikisraduneyti.is/laws-and-regulations/nr/1145).

The sports movement regulates itself, for example by setting codes of ethics and other rules and enforcing them within the sports movement with administrative fines and other disciplinary sanctions.

2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future?

No, there are no plans for a specific legislative framework on this conduct in the near future in the Icelandic system.

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?

N/A

Ireland / Irlande

1. Within your national legislation, regulations and case law is there any <u>specific</u> provision(s) on the conduct of manipulating sport results[63]?

   1.1. <u>If yes</u>: 1. Is that conduct subject to criminal, or administrative, or any other legal sanction?

   2. Could you please attach the text of the provision(s) which provides for such a conduct (where available please attach an English or French text)

   1.2. <u>If not:</u> 1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?

   Although Section 36 of the Gaming and Lotteries Act 1956 prohibits legal action to recover monies in respect of wagers, fraud (also termed 'deceit') is a common law tort in Ireland and as such a civil action could be taken in respect of the any fraudulent element of a gaming transaction. Deceit occurs when a person makes a factual misrepresentation, knowing that it is false (or having no belief in its truth and being reckless as to whether it is true) and intending it to be relied on by the recipient, and the recipient acts to his or her detriment in reliance on it.

   An award of money is made in respect of civil wrongs. Section 6 of the Criminal Justice (Theft and Fraud Offences) Act 2001 makes it a criminal offence to engage in deception with the intent of making a gain – the offence carries a maximum of 5 years imprisonment on conviction and is categorised as an indictable offence. Section 9 of the same Act provides for imprisonment for up to 10 years for the dishonest use of a computer to make a gain. Unlimited fines may also be imposed under this legislation.

   2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future? **No**

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)? **N/A**

[63] You could consider the definition of "manipulation of sports results" as contained in the Appendix to the Recommendation CM/Rec(2011)10 adopted by the Committee of Ministers on 28 September 2011 at the 1122nd meeting of the Ministers' Deputies. Specifically, it stated that "the expression "manipulation of sports results" covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition."

Latvia / Lettonie

1. Within your national legislation, regulations and case law is there any <u>specific</u> provision(s) on the conduct of manipulating sport results?

Neither the Latvian Criminal Law nor Administrative Violations code provides <u>specific</u> provisions on the conduct of manipulating sport results.

1.2. <u>If not:</u> 1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?

Taking into consideration that the term „conduct of manipulating sport results" includes wide range of different possible offences with diverse seriousness, some applicable offences fall under criminal, some – under administrative offences.

Criminal liability is provided in cases, when offences are most serious and dangerous to the public, i.e.:

1) Fraud (Section 177 of the Criminal Law), inter alia, Fraud in an Automated Data Processing System (Section 177[1] of the Criminal Law) and Theft, Fraud, Misappropriation on a Small Scale Section (Section 18 of the Criminal Law):

Section 177. Fraud
(1) For a person who commits acquiring property of another, or of rights to such property, by the use, in bad faith, of trust, or by deceit (fraud),
the applicable punishment is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding sixty times the minimum monthly wage.
(2) For a person who commits fraud, if commission thereof is repeated, or by a group of persons pursuant to prior agreement,
the applicable punishment is deprivation of liberty for a term not exceeding six years, or with confiscation of property, or a fine not exceeding one hundred times the minimum monthly wage.
(3) For a person who commits fraud, if it has been committed on a large scale, or has been committed in an organised group, or it has been committed, acquiring narcotic, psychotropic, powerfully acting, poisonous or radioactive substances or explosive substances, firearms or ammunition,
the applicable punishment is deprivation of liberty for a term of not less than five years and not exceeding thirteen years, or a fine not exceeding one hundred and fifty times the minimum monthly wage, with or without confiscation of property, and with or without police supervision for a term not exceeding three years.

Section 177.[1] Fraud in an Automated Data Processing System
(1) For a person who commits the knowingly entering of false data into an automated data processing system for the acquisition of the property of another person or the rights to such property, or the acquisition of other material benefits, in order to influence the operation of the resources thereof (computer fraud),
the applicable punishment is deprivation of liberty for a term not exceeding five years or custodial arrest, or community service, or a fine not exceeding eighty times the minimum monthly wage.
(2) For a person who commits computer fraud, if commission thereof is repeated, or by a group of persons pursuant to prior agreement,
the applicable punishment is deprivation of liberty for a term not exceeding eight years or with confiscation of property, or a fine not exceeding one hundred and fifty times the minimum monthly wage.
(3) For a person who commits computer fraud, if it has been committed on a large scale or if it has been committed in an organised group,

the applicable punishment is deprivation of liberty for a term of not less than five years and not exceeding fifteen years, or a fine not exceeding two hundred times the minimum monthly wage, with or without confiscation of property, and with or without police supervision for a term not exceeding three years.

Section 180. Theft, Fraud, Misappropriation on a Small Scale
(1) For a person who commits theft, fraud, or misappropriation on a small scale, except for the crimes provided for in the Section 175, Paragraphs three and four; Section 177, Paragraph three and Section 179, Paragraph three of this Law,
the applicable punishment is deprivation of liberty for a term not exceeding two years, or custodial arrest, or community service, or a fine not exceeding fifty times the minimum monthly wage.
(2) For a person who commits the same acts, if the commission thereof is repeated,
the applicable punishment is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding sixty times the minimum monthly wage.

2) Extortion (Section 183 of the Criminal Law), inter alia Extortion by an Organized Group (Section 184 of the Criminal Law):

Section 183. Extortion
(1) For a person who commits demanding without legal basis therefore the surrender of property or rights to property, or the performing of any acts of a financial nature, therewith threatening violence against, or disclosure of defamatory information concerning, the victim or relatives of the victim, or to destroy their property or cause them other substantial harm (extortion),
the applicable punishment is deprivation of liberty for a term not exceeding eight years, with or without confiscation of property.
(2) For a person who commits extortion, if commission thereof is repeated, or by a group of persons pursuant to prior agreement, or using violence, firearms or explosives,
the applicable punishment is deprivation of liberty for a term of not less than five years and not exceeding twelve years, with confiscation of property, and police supervision for a term not exceeding three years.

Section 184. Extortion by an Organised Group
(1) For a person who commits establishing an organised group or participating in such for purposes of extortion,
the applicable punishment is deprivation of liberty for a term of not less than six years and not exceeding ten years, with or without confiscation of property, and police supervision for a term not exceeding three years.
(2) For a person who commits extortion as a member of an organised group, if the extortion is committed using violence, threats, firearms or explosives,
the applicable punishment is deprivation of liberty for a term of not less than eight years and not exceeding twelve years, confiscation of property and police supervision for a term not exceeding three years.
(3) For a person who commits any acts provided for by Paragraph two of this Section if they have resulted in serious consequences,
the applicable punishment is deprivation of liberty for a term of not less than ten years and not exceeding fifteen years, confiscation of property and police supervision for a term not exceeding three years.

3) Unauthorized Receipt of Benefits (Section 198 of the Criminal Law) un Commercial Bribery (Section 199 of the Criminal Law):

Section 198. Unauthorised Receipt of Benefits
(1) For a person who unlawfully accepts material values, property or benefits of other nature, or offers thereof, where accepted by an employee of an undertaking (company) or organisation, or a person who, on the basis of the law or a lawful transaction, is authorised to conduct the matters of another person, him or herself or through an intermediary, for performing or failing to perform some act, in the interests of the giver of the benefit or any other person, using his or her

authority, regardless of whether the material values, property or benefits of other nature accepted are intended for this person or any other person,
the applicable punishment is deprivation of liberty for a term not exceeding three years, or community service, or a fine not exceeding eighty times the minimum monthly wage.
(2) For a person who commits the acts provided for in Paragraph one of this Section, if commission thereof is repeated, or on a large scale, or they have been committed by a group of persons pursuant to prior agreement, or where material values, property or benefits of other nature have been requested,
the applicable punishment is deprivation of liberty for a term not exceeding five years, with confiscation of property, or community service, or a fine not exceeding one hundred times the minimum monthly wage, with or without deprivation of the right to engage in specific forms of entrepreneurial activity or employment for a term not exceeding two years.
(3) For a person who unlawfully accepts material values, property or benefits of other nature, or offers thereof, where accepted by a responsible employee of an undertaking (company) or organisation himself or herself or through an intermediary, or a person similarly authorised by an undertaking (company) or organisation, or a person who, on the basis of the law or a lawful transaction, is authorised to resolve disputes or take binding decisions but who is not a State official, for performing or failing to perform some act, in the interests of the giver of the benefit or the offerer, or any other person, using his or her authority, regardless of whether the accepted material values, property or benefits of other nature are intended for this person or any other person,
the applicable punishment is deprivation of liberty for a term not exceeding six years or with confiscation of property, or community service, or a fine not exceeding one hundred and twenty times the minimum monthly wage, with or without deprivation of the right to engage in specific forms of entrepreneurial activity or employment for a term not exceeding three years.
(4) For a person who commits the acts provided for in Paragraph three of this Section, if commission thereof is repeated, or on a large scale, or they have been committed by a group of persons pursuant to prior agreement, or they are associated with a demand for material values, property or benefits of other nature,
the applicable punishment is deprivation of liberty for a term not exceeding eight years, or a fine not exceeding one hundred and fifty times the minimum monthly wage, with or without confiscation of property, with or without deprivation of the right to engage in specific forms of entrepreneurial activity or employment for a term not exceeding five years.

Section 199. Commercial Bribery
(1) For a person who commits the offering or giving of material values, property or benefits of other nature, if the offer is accepted, in person or through intermediaries to an employee of an undertaking (company) or organisation, or a person who, on the basis of the law or a lawful transaction, is authorised to conduct affairs of another person, or a responsible employee of an undertaking (company) or organisation, or a person similarly authorised by an undertaking (company) or organisation, or a person who, on the basis of the law or lawful transaction, is authorised to settle disputes so that he or she, using his or her authority, performs or fails to perform some act in the interests of the giver of the benefit or the offerer, or any other person regardless of whether the material values, property or benefits of other nature are intended for this person or any other person,
the applicable punishment is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding fifty times the minimum monthly wage.
(2) For a person who commits the same acts, if commission thereof is repeated or on a large scale,
the applicable punishment is deprivation of liberty for a term not exceeding five years, or community service, or a fine not exceeding one hundred times the minimum monthly wage.

4) Interference in the Operation of Automated Data Processing Systems and Illegal Actions with the Information included in Such Systems (Section 243 of the Criminal Law):

Section 243. Interference in the Operation of Automated Data Processing Systems and Illegal Actions with the Information included in Such Systems
(1) For a person who commits without authorisation modifying, damaging, destroying, impairing or hiding of information stored in an automated data processing system, or knowingly entering false information into an automated data processing system, if the protective systems are damaged or destroyed thereby or substantial harm is caused thereby,
the applicable punishment is deprivation of liberty for a term not exceeding five years or community service, or a fine not exceeding one hundred and fifty times the minimum monthly wage.

(2) For a person who commits knowingly interference in the operation of an automated data processing system by entering, transferring, damaging, extinguishing, impairing, changing or hiding information, if the protective systems are damaged or destroyed thereby or losses caused on large scale,
the applicable punishment is deprivation of liberty for a term not exceeding five years or community service, or a fine not exceeding one hundred and fifty times the minimum monthly wage.
(3) For a person who commits acts provided for in Paragraph one or two of this Section, if commission thereof is in an organised group or for purposes of acquiring property, or if serious consequences are caused thereby,
the applicable punishment is deprivation of liberty for a term not exceeding eight years or a fine not exceeding two hundred times the minimum monthly wage, with or without confiscation of property, and with or without police supervision for a term not exceeding three years.
(4) For a person who commits acts provided for in Paragraph one or two of this Section, if they are directed against the State information system,
the applicable punishment is deprivation of liberty for a term not exceeding eight years or a fine not exceeding two hundred times the minimum monthly wage.

5) Forgery of a Document, Seal and Stamp and Use and Sale of a Forged Document, Seal and Stamp (Section 275 of the Criminal Law):

Section 275. Forgery of a Document, Seal and Stamp and Use and Sale of a Forged Document, Seal and Stamp
(1) For a person who commits forgery of a document conferring rights or a release from obligations, of a seal or a stamp, as well as commits using or selling a forged document, seal or stamp,
the applicable punishment is deprivation of liberty for a term not exceeding two years, or custodial arrest, or by community service, or a fine not exceeding forty times the minimum monthly wage.
(2) For a person who commits the same acts, if commission thereof is repeated, or for the purpose of acquiring property, or by a group of persons pursuant to prior arrangement, or substantial harm is caused thereby to the State power or administrative order or to rights and interests protected by law of a person,
the applicable punishment is deprivation of liberty for a term not exceeding four years or community service, or a fine not exceeding sixty times the minimum monthly wage.

Conduct of manipulating sport results can be qualified under the before mentioned Sections of the Criminal Law. Same, Conduct of manipulating sport results can be committed in many other ways and can be related with other criminal offences as Giving of Bribes (Section 323), Using Official Position in Bad Faith (Section 318) etc.

Administrative liability is provided in less serious or dangerous to the public cases, i.e.:

1) Violation of the Doping Control Procedures (Section 201[56] of the Administrative violations code)

Section 201[56] Violation of the Doping Control Procedures
In the case of violation of the specified procedures for the doping control –
a fine shall be imposed on a official in an amount from LVL 50 up to LVL 250.

2) Evasion of Doping Control (Section 201[57] of the Administrative violations code)

Section 201.[57] Evasion of Doping Control
In the case of evasion of doping control to be performed according to the specified procedures –
a fine in an amount from LVL 50 up to LVL 250 shall be imposed.

3) Failure to Provide Information regarding the Use of Doping Substances or the Utilisation of Doping Methods (Section 201[58] of the Administrative violations code)

Section 201.[58] Failure to Provide Information regarding the Use of Doping Substances or the Utilisation of Doping Methods

In the case of failure to provide information related to the use of doping substances or the utilisation of doping methods, or in the case of provision of false information –

a fine shall be imposed on a natural person in an amount from LVL 50 up to LVL 250, but for a State official – from LVL 100 up to LVL 250.

2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future?

Specific legislative framework in order to separate conduct related to manipulating sport results is not planned to be adopted. Besides, manipulating sport results can be realized in framework of other criminal and administrative offences. Therefore proportionate sanctions and different types of legal liability are provided.

Lithuania / Lituanie

QUESTIONNAIRE REGARDING THE WORK OF THE COUNCIL OF EUROPE ON THE ISSUE OF "MANIPULATION OF SPORTS RESULTS, NOTABLY MATCH-FIXING"

1. **Within your national legislation, regulations and case law is there any <u>specific</u> provision(s) on the conduct of manipulating sport results?**

General answer is **no,** yet this answer is ambiguous as manipulation of sports results might fall under civil violation, criminal or administrative offence. Manipulations of sports results (or match-fixing, or illegal influence) are covered as a disciplinary offence in some sport disciplinary codes, for instance Lithuanian Football Federation disciplinary code.[1]

Further analysis is provided below.[2]

Match fixing and criminal offences

In Lithuania the concept of match-fixing is not provided either in scientific doctrine, or in court practice. In the context of Lithuania's regulation match-fixing is closer to fraud than to bribery, the reasons are as follows:

1) Arguments concerning subject

Fraud is described as obtaining a property by cheating where obtainer could be any physical or natural person. The subject of bribery shall be state person or person who is equated to state person. The subject of bribery could also be a private person, however, this person must have the power of public administration or the right to provide public services. Athletes who fix matches do not execute administrative powers – they do not have subordinates, do not distribute financial resources, do not rule staff – therefore *stricto sensu* they cannot be a subject of bribery.

2) Arguments concerning *modus operandi*.

Bribery does not convey *modus operandi* of match fixing, because tacit agreements do not represent functions of public administration. A prize does not belong to athletes (in bribery the corrupt person usually illegally disposes his own or trust property), it usually belongs to the state or sponsors. Thus when athletes fix matches, they aim to get a prize that belongs to others by cheating, *id est* their acts are closer to fraud than bribery. However, problems arise in that case when prizes are unexpected. Match-fixing does not guarantee obtaining of property – many coincidences exist in sport and it is impossible to foresee all results. Therefore *corpus delicti* of fraud *sensu stricto* goes only if certain property is obtained. From the other point of view, if property is not obtained, then match-fixing could be qualified as an attempt to fraud. Another possibility is to qualify in consonance with already emerged consequences – for example if a reached prize is lesser than one minimum living standard, then administrative, not criminal, responsibility should arise.

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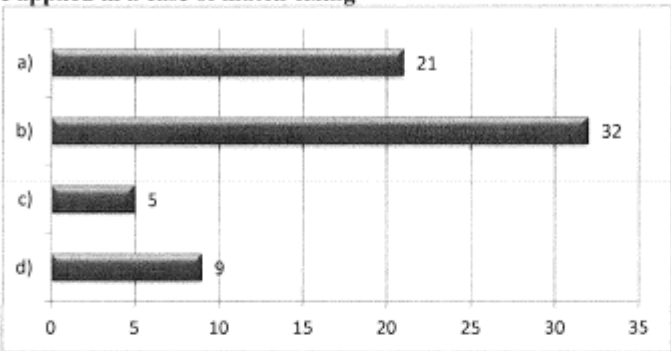
[1] Article 44 of Lithuanian Football Federation Disciplinary code. *Illegal Influence*. Direct or indirect taking of, asking, request, suggestion, supply, agreeing to supply or agreeing to take any type of a reward, which could be perceived as a tool to influence the result or the course of the Match, or any such attempt with a prohibited way infringing the sport ethics to influence the results or the course of the Match is considered to be a highly serious illegal conduct that breaches the Disciplinary Code and the integrity of football (however, official promotional and encouraging actions of Club's players and Officials is not deemed as illegal conduct). The Participant who has committed such illegal action may be sanctioned with disqualification and/or a fine and/ or a ban to participate in a certain or any football-related activity or other sanctions indicated in the Disciplinary Code might be applied. 2. In the case when the infringement specified under Clause 1 of this Article is committed or is attempted to be committed by a player or any other Official, the Club/ Team to which the player of the Official belongs to may be sanctioned with elimination from the Competition and/or demotion to a lower division, and/or point deduction, and/or return of awards (prizes, ranks, premiums, etc.), and any other sanctions indicated in the Disciplinary Code. The whole code (also in English) is available at: http://www.lff.lt/lt/Drausminiu_organu_dokumentai

[2] Prepared according to: Zaksaitė S. *Cheating in sport: Lithuanian case for legal regulation*. US-China Law Review. Volume 7, Number 2, February 2010. ISSN 1548-6605, p. 56-64. http://www.cqvip.com/qk/88588X/201002/

Lithuanian officers in law enforcement institutions were asked if the *corpus delicti* of bribery can be applied to match-fixing.[3]

Table No. 1. The opinion of Lithuanian law enforcement institutions officers if bribery can be applied in a case of match-fixing



a) Bribery cannot be applied as sportsmen are not public officers and they do not provide public services.

b) Bribery can be applied to match-fixing only if referees or officers from sports associations (people who have the powers of public administration) participate in match fixing.

c) It depends on how we understand match-fixing: as violation of sports rules or (also) as abuse of a sportsman's status;

d) Other.

Majority of officers (79 % or 53 respondents in absolute numbers), said that sportsmen (alone) cannot exercise bribery (a and b answers) as they do not execute public powers.

Match fixing and administrative offences

In Lithuania criminal responsibility for fraud arises when the harm is not bigger than minimum living standard (130 LTL). Therefore the main criterion separating administrative and criminal law is harm. Problems arise when the amount of prize is unclear. In that case it would be rational to qualify the violation according to consequences. In other words, if athletes shared a prize which is less than 130 LTL, then criminal liability would not occur. Another problematic aspect is related with immaterial prizes (medals, norms, ticket to Olympics, etc.). In that case material benefit could be understood wider – it should be ascertained what monetary value in sport market a certain prize has. It should be noted that immaterial prizes raise doubts whether cheating in sport should be generally attributed to violations against property.

Match fixing and civil torts

As stated above, the main difference between fraud and a civil tort is intentional cheating. It is considered that careless tacit agreement is impossible – athletes or coaches intentionally aim to direct results in such a way that the results would bring maximal benefit. Therefore serious doubts about separation do not occur – in other words, intentional deception *per se* means criminal offence rather than a civil tort. However, criminal responsibility does not eliminate civil responsibility –

[3] Author of the article (Zaksaitė S.) in 2010 carried out a quantitative survey (of Lithuanian law enforcement institutions officers) which was designed to ascertain how the officers relate cheating in sport with certain crimes – fraud, bribery and others. The officers were prosecutors; judges of first instance court, High Court and Constitutional Court of the Republic of Lithuania. The number of officers (who agreed to answer to certain questions) was 66.

therefore if match-fixing was criminalized, the cheater would have to compensate harm as well as suffer criminal sanction.

To sum up Lithuanian legal framework on match-fixing, it should be pointed out that theoretically a wide range of law (disciplinary, administrative, civil and criminal) can be applicable. The main difficulties are connected with delimitation of criminal fraud and bribery, to be precise, it should be decided if the athlete executes the powers of public administration (primary analysis has shown that the actions of an ordinary athlete can hardly be described as public administration, though the actions of a top athlete are very "near" to public administration); another problem is related to difficulties in qualifying actions in case of immaterial prizes. One way out could be approximate evaluation (most probably with a help of experts), how much in the sport "market" certain medals, norms, titles, etc. are worth.

2. **If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?**

There was one case (Panevėžys county court, criminal case No. 1-62-349/2011) in which two persons were convicted for having demanded money from a Lithuanian basketball player who had allegedly benefited, when betting, from information received from football players in Estonia regarding the outcome of an international football match in which the latter football players were involved. The two persons were convicted for self-willed conduct (acting wilfully by using physical or mental coercion against the victim). Two further persons were convicted for influence on the victim (the basketball player). The case is regarded as providing a precedent for convicting persons related to illegal betting on sports. However, the aspect of possibly illegal betting was not elaborated on in the judgment and the court limited itself to noting that the statements of the basketball player regarding possible agreements with the defendants were not entirely consistent.

In another recent case in which Lithuanian basketball players participated in a bet regarding the match in which they were involved their conduct was assessed as intolerable by the director general of the Lithuanian Basketball League and the players were fined based on the regulations of Lithuanian Basketball Championship. The Prosecutor General's Office decided not to initiate investigation into this incident based on the insufficiency of information regarding any possible prior knowledge of the outcome of the match, fairness of play, indications of intentional losing, etc.

Montenegro / Monténégro

Questionnaire:

1. Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results[2]?

No. The Criminal Code does not prescribe specific criminal offense on the issue of manipulation of sports results, notably match-fixing.

1.1. If yes: 1. Is that conduct subject to criminal, or administrative, or any other legal sanction?

2. Could you please attach the text of the provision(s) which provides for such a conduct (where available please attach an English or French text)

1.2. If not: 1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?

2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future?

Fraud

Article 244

(1) Anyone who, intending to obtain unlawful material benefit for him/herself or to someone else, falsely presenting or concealing facts misleads someone or keeps him/her mislead and thereby instigates him/her to do or fail to do something to the detriment of his/her property or other person's property, shall be punished by a fine or an imprisonment sentence not exceeding three years.

2) Anyone who commits an offence referred to in paragraph 1 of this Article only intending to make detriment to another, shall be punished by a fine or imprisonment sentence not exceeding six months.

(3) Where through an offence referred to in paras. 1 and 2 of this Article material benefit is acquired or damage inflicted exceeding the amount of three

[2] You could consider the definition of "manipulation of sports results" as contained in the Appendix to the Recommendation CM/Rec(2011)10 adopted by the Committee of Ministers on 26 September 2011 at the 1122nd meeting of the Ministers' Deputies. Specifically, it stated that "the expression "manipulation of sports results" covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition."

thousand euro, the offender shall be punished by an imprisonment sentence of one to eight years.

(4) Where through an offence referred to in paras. 1 and 2 of this Article material benefit is acquired or damage exceeding thirty thousand euro inflicted, the offender shall be punished by an imprisonment sentence of two to ten years.

Fraud in the Conduct of an Official Duty

Article 419

(1) An official who in the performance of his/her office and with the intention of acquiring for himself or another an illicit material benefit by submitting false statements of account or who in some other manner misleads an authorized person to make an unlawful payment, shall be punished by an imprisonment sentence of six months to five years.

(2) If material benefit acquired as a result of an offence referred to in paragraph 1 of this Article exceeds the amount of three thousand euro, the offender shall be punished by an imprisonment sentence of one to eight years.

(3) If an illicit material benefit acquired through an offence referred to in paragraph 1 of this Article exceeds the amount of thirty thousand euro, the offender shall be punished by an imprisonment sentence of two to ten years.

Embezzlement

Article 420

(1) A person who, with the intention of acquiring illicit material benefit for himself/herself or another, appropriates money, securities or other movable articles entrusted to him/her by virtue of his/her office or work in a state body, institution or other entity not involved in economic activity, shall be punished by an imprisonment sentence of six months to five years.

(2) If material benefit acquired through an offence referred to in paragraph 1 of this Article exceeds the amount of three thousand euro, the offender shall be punished by an imprisonment sentence of one to eight years.

(3) If material benefit acquired through an offence referred to in paragraph 1 of this Article exceeds the amount of thirty thousand euro, the offender shall be punished by an imprisonment sentence of two to ten years.

Petty Fraud in the Conduct of an Offical Duty, Embezzlement and Unauthorized Use

Article 421a

(1) Anyone who commits a petty fraud in the conduct of an official duty, embezzlement or unauthorized use, shall be punished by a fine or an imprisonment sentence not exceeding one year.

(2) Fraud in the conduct of an official duty, embezzlement and unauthorized use shall be considered petty if the amount of unlawful payment, the value of acquired unlawful material benefit or the value of embezzled things or of the thing the offender used without authorization does not exceed the amount of one hundred and fifty euro, with the intention to obtain small material benefit.

Passive Bribery

Article 423

(1) A person in official capacity who directly or indirectly requests or receives a gift or any other benefit, or who accepts a promise of gift or any benefit for himself/herself or another person for agreeing to perform an official or other act s/he should not perform, or not to perform an official or other act which s/he must perform, shall be punished by an imprisonment sentence of two to twelve years.

(2) A person in official capacity who directly or indirectly requests or receives a gift or any other benefit, or who accepts a promise of gift or any benefit for himself/herself or another person for agreeing to perform an official or other act s/he must perform, or not to perform an official or other act which s/he should not perform, shall be punished by an imprisonment sentence of two to eight years.

(3) A person in official capacity who commits the offence referred to in paragraphs 1 or 2 of this Article in relation to detection of a criminal offence, initiating or conducting a criminal proceedings, imposing or enforcement of a criminal sanction, shall be punished by an imprisonment sentence of three to fifteen years.

(4) An person in official capacity who requests or receives a gift or other benefit after having performed or omitted to perform an official or other act referred to in paragraph 1, 2 and 3 of this Article, or in conjunction with it, shall be punished by an imprisonment sentence of three months to three years.

(5) A foreign person in official capacity who commits an offence referred to in paragraphs 1, 2, 3 and 4 of this Article, shall be punished by a sentence laid down for such an offence.

(6) A responsible or other person in a non-commercial institution or other entity who commits an offence referred to in paragraphs 1, 2 and 4 of this Article, shall be punished by a sentence laid down for such an offence.

(7) Received gift or other benefit shall be seized.

Active Bribery

Article 424

(1) Anyone who gives, offers or promises a gift or other benefit to a person in official capacity or other person who agrees to perform an official or other act s/he should not perform or not to perform an official or other act s/he must perform, or a

person who mediates in such bribery of a person in official capacity, shall be punished by an imprisonment sentence of six months to five years.

(2) Anyone who gives, offers or promises a gift or other benefit to a person in official capacity or other person who agrees to perform an official or other act s/he should perform or not to perform an official or other act s/he must not perform, or a person who mediates in such a bribery of a person in official capacity, shall be punished by an imprisonment sentence not exceeding three years.

(3) Provisions of paragraphs 1 and 2 of this Article shall also be applied when a gift or other benefit was given, offered or promised to a foreign person in official capacity.

(4) Perpetrator of the offence referred to in paragraphs 1, 2 and 3 of this Article who had reported the criminal offence before s/he found out that the crime was detected, may be remitted of penalty.

(5) Provisions of paragraphs 1, 2 and 4 of this Article shall also be applied when a gift or other benefit was given, offered or promised to a responsible or other person of a non-commercial institution or other entity.

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?

At this moment we do not have information about investigations in cases of manipulating sport results in Montenegro.

* * *

Monaco

1. Existe-t-il, dans votre législation nationale, dans vos règlements et dans votre jurisprudence, une ou plusieurs disposition(s) spécifique(s) quant à la manipulation des résultats sportifs[64] ?

   Non, il n'existe pas de disposition spécifiques sur la manipulation de résultats

   sportifs.

   1.1. Si oui: 1. Est-ce que ce comportement est soumis à une sanction pénale ou administrative, ou à toute autre sanction juridique ?

   . 2. Pouvez-vous, s'il vous plaît, joindre le texte de(s) la disposition(s) qui traite(nt) de ce comportement (si disponible, joignez un texte en anglais ou en français s'il vous plaît).

   1.2. Si non: 1. Est-ce que selon votre législation, la manipulation de résultats sportifs (ou certaines formes de ce comportement) relève d'une ou plusieurs infractions (pénales, administratives ou autres) ?

   De tels comportements pourraient être poursuivis sur le fondement de dispositions relatives à la corruption qui font l'objet de dispositions du code pénal suivantes :

   « Article *113 .-* *Tout fonctionnaire public de l'ordre administratif ou judiciaire, tout agent ou préposé d'une administration publique qui aura agréé des offres ou promesses ou reçu des dons ou présents, pour faire un acte de sa fonction ou de son emploi, même juste, mais non sujet à rémunération, sera puni d'un emprisonnement de un à cinq ans et de l'amende prévue au chiffre 4 de l'article 26.*

   Il sera, en outre, déclaré incapable d'exercer aucune fonction publique.

   La présente disposition est applicable à tout fonctionnaire, agent ou préposé de la qualité ci-dessus exprimée, qui, par offres ou promesses agréées, dons ou présents reçus, se sera abstenu de faire un acte qui entrait dans l'ordre de ses devoirs.

   Article 114 .- *Sera puni de la peine prévue à l'article précédent, tout arbitre ou expert, désigné, soit par autorité de justice, soit par les parties, qui aura agréé des offres ou promesses, ou reçu des dons ou présents, pour prendre une décision ou donner une opinion favorable à l'une des parties.*

   Article 115 .- *Sera puni d'un emprisonnement de six mois à trois ans et de l'amende prévue au chiffre 3 de l'article 26, tout commis, employé ou préposé, salarié ou rémunéré sous une forme quelconque, qui aura, soit directement, soit par personne interposée, à l'insu et sans le consentement de son employeur, soit sollicité ou agréé des offres ou promesses, soit sollicité ou reçu des dons, présents, commissions, escomptes ou primes pour faire un acte de son emploi ou s'abstenir de faire un acte que son devoir lui commandait de faire.*

   Article 118 .- *Quiconque aura contraint ou tenté de contraindre par voies de fait ou menaces, corrompu ou tenté de corrompre par promesses, offres, dons ou présents, un fonctionnaire, agent ou préposé de la qualité exprimée en l'article 113, pour obtenir, soit une opinion favorable, soit des procès-verbaux, états, certificats ou estimations contraires à la vérité, soit des places, emplois, adjudications, entreprises ou autres bénéfices, soit tout autre acte du ministère du fonctionnaire, agent ou préposé, soit*

[64] Vous pourriez envisager la définition de «manipulation de résultats sportifs » figurant dans l'annexe à la Recommandation CM/ / Rec (2011) 10 adoptée par le Comité des Ministres le 28 septembre 2011, lors de la 1122e réunion des Délégués des Ministres. Plus précisément, il a été déclaré que : «l'expression "manipulation des résultats sportifs" désigne un arrangement sur une modification irrégulière du déroulement ou du résultat d'une compétition sportive ou d'un de ses événements en particulier (par exemple match, course…), afin d'obtenir un avantage pour soi-même ou pour d'autres et de supprimer tout ou partie de l'incertitude normalement liée aux résultats d'une compétition. »

l'abstention d'un acte qui rentrait dans l'exercice de ses devoirs, sera puni des mêmes peines que le fonctionnaire, agent ou préposé corrompu.

Article 119 .- *Quiconque aura corrompu ou tenté de corrompre, par promesses, offres, dons, présents, commissions, escomptes ou primes, tout commis, employé, préposé, rémunéré ou salarié sous une forme quelconque, pour obtenir qu'il accomplisse un acte de son emploi ou qu'ils s'abstienne d'un acte qui entrait dans l'exercice de ses devoirs, sera puni d'un emprisonnement de six mois à trois ans et de l'amende prévue au chiffre 3 de l'article 26. »*

L'article 350 du code pénal pourrait également selon le cas être utilisé :

*« **Article 350 .-** Ceux qui, sans l'autorisation préalable du Gouvernement, auront établi ou tenu des maisons de jeux de hasard, ou organisé toutes loteries ou toutes ventes effectuées par la voie du sort, et, d'une façon générale, toutes opérations offertes au public, sous quelque dénomination que ce soit, pour faire naître l'espérance d'un gain qui serait acquis par la voie du sort, seront punis d'un emprisonnement de un à six mois et de l'amende prévue au chiffre 2 de l'article 26, ou de l'une de ces deux peines seulement.*

Les coupables pourront, de plus, être interdits des droits mentionnés à l'article 27 du présent code pendant cinq ans au moins et dix ans au plus, à compter du jour où ils auront subi leur peine. »

2. En raison de l'absence d'une législation spécifique dans votre système, envisagez-vous d'adopter une loi spécifique sur ce comportement à l'avenir ?

Cela ne semble pas être le cas à ce jour.

2. S'il y a déjà eu dans votre pays des enquêtes sur des cas de manipulation de résultats sportifs, pourriez-vous s'il vous plaît fournir toute information pertinente sur la façon dont les organes d'application de la loi (police, procureurs et tribunaux) se sont occupé de tels cas (les enquêtes ont-elles été couronnées de succès, les suspects ont-ils été identifiés et poursuivis, les sanctions pénales et administratives ont-elles été appliquées)?

Une seule procédure relative à la manipulation de résultats de matches de football, encore en cours, a été enregistrée à Monaco. Les autorités monégasques ont été saisies par des autorités étrangères dans le cadre de demandes d'entraide judiciaire en matière pénale dans lesquelles le blocage de comptes bancaires appartenant à un des principaux suspects a été sollicité.

Il lui est reproché d'avoir notamment influencé des le résultats de matches par des violences et/ ou encaissement d'argent et d'avoir parié d'importantes sommes d'argent sur les matches dont il connaissait à l'avance le résultat.

A la suite de cette demande, une information pour blanchiment de fonds a été ouverte à Monaco.

Norway / Norvège

1. Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results? **NO**

1.1. If yes:

1. Is that conduct subject to criminal, or administrative, or any other legal sanction?
2. Could you please attach the text of the provision(s) which provides for such a conduct (where available please attach an English or French text)

1.2. If not:

1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?
Yes, certain actions may fall within the scope of e.g. bribery, corruption etc.

2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future? **NO**

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)? **NO known investigations (reference: the Norwegian Football Association)**

Poland / Pologne

Question 1

In Polish law, manipulating sports results, in particular match-fixing is considered a criminal offence. The relevant provisions are contained in articles 46 - 49 of the Act of 25 June 2010 on Sport (Journal of Laws of 15 July 2010, No 127, item 857). They are as follows (working English translation contained below):

Art. 46. 1. Kto, w związku z zawodami sportowymi organizowanymi przez polski związek sportowy lub podmiot działający na podstawie umowy zawartej z tym związkiem lub podmiot działający z jego upoważnienia, przyjmuje korzyść majątkową lub osobistą albo jej obietnicę lub takiej korzyści albo jej obietnicy żąda w zamian za nieuczciwe zachowanie, mogące mieć wpływ na wynik tych zawodów,
podlega karze pozbawienia wolności od 6 miesięcy do lat 8.
2. Tej samej karze podlega, kto w wypadkach określonych w ust. 1 udziela albo obiecuje udzielić korzyści majątkowej lub osobistej.
3. W wypadku mniejszej wagi, sprawca czynu określonego w ust. 1 lub 2
podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.
4. Jeżeli sprawca czynu określonego w ust. 1 lub 2 przyjmuje korzyść majątkową znacznej wartości albo jej obietnicę lub udziela takiej korzyści albo jej obietnicy lub takiej korzyści albo jej obietnicy żąda,
podlega karze pozbawienia wolności od roku do lat 10.

Art. 47. Kto, mając wiadomość o popełnieniu czynu zabronionego określonego w art. 46, bierze udział w zakładach wzajemnych dotyczących zawodów sportowych, do których odnosi się ta wiadomość, lub ujawnia tę wiedzę w celu wzięcia udziału przez inną osobę w takich zakładach,
podlega karze pozbawienia wolności od 3 miesięcy do lat 5

Art. 48. 1. Kto, powołując się na wpływy w polskim związku sportowym lub podmiocie działającym na podstawie umowy zawartej z tym związkiem lub podmiocie działającym z jego upoważnienia albo wywołując przekonanie innej osoby lub utwierdzając ją w przekonaniu o istnieniu takich wpływów, podejmuje się pośrednictwa w ustaleniu określonego wyniku zawodów sportowych w zamian za korzyść majątkową lub osobistą albo jej obietnicę,
podlega karze pozbawienia wolności od 6 miesięcy do lat 8.
2. Tej samej karze podlega, kto udziela albo obiecuje udzielić korzyści majątkowej lub osobistej w zamian za pośrednictwo w ustaleniu określonego wyniku zawodów sportowych polegające na bezprawnym wywarciu wpływu na zachowanie osoby pełniącej funkcję w polskim związku sportowym lub podmiocie działającym na podstawie umowy zawartej z tym związkiem lub podmiocie działającym z jego upoważnienia, w związku z pełnieniem tej funkcji.
3. W wypadku mniejszej wagi, sprawca czynu określonego w ust. 1 lub 2
podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

Art. 49. Nie podlega karze sprawca przestępstwa określonego w art. 46 ust. 2, art. 46 ust. 3 lub 4, w związku z ust. 2, lub w art. 48 ust. 2 lub 3, w związku z ust. 2, jeżeli korzyść majątkowa lub osobista albo ich obietnica zostały przyjęte, a sprawca zawiadomił o tym fakcie organ powołany do ścigania przestępstw i ujawnił wszystkie istotne okoliczności przestępstwa, zanim organ ten o nim się dowiedział.

English translation:

Art. 46. 1. Who, acting in relation with a sports competition organised by a Polish sports association or a body acting pursuant to an agreements executed with such association or a body acting upon such association's

authorisation, accepts a financial or personal benefit, or a promise of such a benefit, or demands the promise of such a benefit in exchange for any unfair behaviour that might influence the result of the competition,
is subject to deprivation of liberty for the term of between 6 months and 8 years.
2. A person, who, in circumstances set out in s.1, provides a financial or personal benefit or promises to provide such a benefit, is subject to the same penalty.
3. In cases of lesser significance, the perpetrator of an act set out in s. 1 or 2
is subject to a fine, limitation of liberty or deprivation of liberty for the term of up to 2 years.
4. If the perpetrator of an act set out in s. 1 or 2 accepts a financial benefit of significant value, or a promise of such benefit, or provides such benefit or promise, or demands such benefit or promise, he
is subject to deprivation of liberty for the term of between 1 and 10 years

Art. 47 Who, being in possession of information that a prohibited act mentioned in art. 46 above has been committed, takes part in a bet relating to a sports competition, to which such information pertains, or makes such information public with the intention that another person takes part in such a bet,
is subject to deprivation of liberty for the term of between 3 months and 5 years

Art. 48 1. Who, claiming to have an influence on a Polish sports association or a body acting pursuant to an agreements executed with such association or a body acting upon such association's authorisation, or implies such influence, or reassures another person of such influence, undertakes to intermediate to fix a determined result of a sports competition in exchange for a financial or personal benefit, or its promise,
is subject to deprivation of liberty for the term of between 6 months and 8 years.
2.A person, who provides or promises to provide a financial or personal benefit in exchange for intermediation to fix a determined result of a sports competition, which amounts to an unlawful influence on a person holding an office in a Polish sports association or a body acting pursuant to an agreements executed with such association or a body acting upon such association's authorisation, in relation to the holding of that office, is subject to the same penalty.
3. In cases of lesser significance, the perpetrator of an act set out in s. 1 or 2
is subject to a fine, limitation of liberty or deprivation of liberty for the term of up to 2 years.

Art. 49 The perpetrator of a crime set out in Art. 46 s. 2, art. 46 s. 3 or 4 in conjunction with s. 2, or art. 48 s. 2 or 3 in conjunction with s. 2, in cases a financial or personal benefit has been accepted and the perpetrator notified of that an authority dedicated to fighting crime and revealed all important circumstances of the crime, before such authority became aware of that, shall not be subject to a penalty.

Question 2

We are unfortunately unable to provide detailed information on how crimes relating to the manipulation of sports results have been handled so far. There are no separate statistics for this type of offences and obtaining any detailed data would require a comprehensive survey in all the courts and prosecutor's offices in Poland, which was impossible in the time frame presented.

Portugal

1. Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results[65]?

1.1. If yes: 1. Is that conduct subject to criminal, or administrative, or any other legal sanction?

2. Could you please attach the text of the provision(s) which provides for such a conduct (where available please attach an English or French text)

YES

1. The manipulating of sport results is foreseen in Law n. º 50/2007, of 31st August, that establishes the criminal responsibility for conducts affecting the truth, loyalty and fairness of matches and its results. This legislation entered into force in 15th September 2007. The conduct is criminalized as corruption and subject to criminal sanctions.

2. The main provisions of such instrument read as follows:

(Non-official translation)

Law n. º 50/2007, of 31 August

Article 1

Object

This law establishes the criminal liability for unsporting behavior, contrary to the values of truth, loyalty and fairness, which may fraudulently alter the results of a sports competition.

Article 3

Criminal liability of legal persons and similar entities

1 - Legal persons and similar entities, including sports legal persons, are liable for the crimes foreseen by the present law.

[65] You could consider the definition of "manipulation of sports results" as contained in the Appendix to the Recommendation CM/Rec(2011)10 adopted by the Committee of Ministers on 28 September 2011 at the 1122nd meeting of the Ministers' Deputies. Specifically, it stated that "the expression "manipulation of sports results" covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition."

2 - The status of public usefulness sports does not exclude the criminal liability of such sports legal persons.

Article 4

Additional penalties

Agents of the crimes set forth in the present law may be subject to the following additional penalties:

a) Suspension of participation in competitive sport for a period of six months to three years;

b) Ineligibility to subsidies, grants or incentives granted by the State, Autonomous Regions, local authorities and other public bodies for a period of one to five years;

c) Prohibition of practice of profession, function or activity, public or private, for a period of one to five years, in the case of sports director, sports coach, sports official, sports entrepreneur or legal person or similar entity.

Article 6

Mandatory Reporting

Holders of bodies and officials of sports federations or professional leagues, associations and groups of clubs affiliated to them should report to the Public Prosecution Service any crimes foreseen under this law that came to its acknowledgment during the exercise of their duties or due to these.

Article 8

Passive Corruption

A sports agent who by himself, or through another person, with his consent or ratification, demands or accepts for himself or a third party, any undue advantage whether of economic nature or not or its promise for any act or omission aiming to alter or distort the result of a sporting event is punished with imprisonment from 1 to 5 years.

Article 9

Active Corruption

1 – Whoever by himself, or through another person, with his consent or ratification, offers or promises a sports agent or to a third party, to the knowledge of the first, any undue advantage whether of economic nature or not, for the purpose stated in article 8, is punished with imprisonment up to three years or a fine.

2 - The attempt is punishable.

Article 10

Trade in influence

1 – Whoever by himself, or through another person, with his consent or ratification, demands or accept for himself or for a third party, any advantage whether of economic nature or not, or its promise, for the purpose of exercising a real or perceived influence on any sports agent, with the purpose of obtaining a decision to change or falsify the result of a sporting event shall be punished with imprisonment up to three years or a fine, if a more severe penalty is not applicable by virtue of another legal provision.

2 - Whoever by himself, or through another person, with his consent or ratification, offers or promises to offer any advantage whether of economic nature or not for the purpose referred to in the preceding paragraph shall be punished with imprisonment of up to 2 years or a fine of up to 240 days, where a severe penalty is not applicable by virtue of other legal provision.

Article 11

Conspiracy

1 – Whoever promotes, establishes, participates or supports a group, organization or association whose purpose or activity is directed to the practice of one or more crimes herein provided shall be punished with imprisonment from 1 to 5 years.

2 - Whoever leads or directs the above mentioned groups, organizations or associations shall be punished with the penalty therein provided increased by one third in its minimum and maximum limits.

3 - For the purposes of this article, it is considered that there is a group, organization or association where a set of at least three persons acts in concert over a period of time.

Article 12

Aggravation

1 - The penalties foreseen in Article 8 and in paragraph 1 of Article 10 shall be increased by one third in its minimum and maximum limits if the agent is a sports director, sports referee, sports entrepreneur or sports legal person.

2 - If the crimes mentioned in Article 9 and in paragraph 2 of Article 10 are committed upon the person mentioned in the preceding paragraph, the agent is punished with a penalty that would fit the case, increased by one third in its minimum and maximum limits.

1.2. If not:

1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?

2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future?

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?

The most noteworthy and famous criminal case regarding the manipulation of sport results is the so called "Apito Dourado" (Golden Whistle) affair, a sports corruption scandal in Portuguese football that arose in 2004, prior to the law mentioned above.

In this case, the Portuguese Judiciary Police investigators named 16 football personalities as suspects of corrupting or attempting to corrupt referees. These suspects included the chairman of Futebol Clube do Porto and the former Boavista Futebol Clube chairman and Portuguese League for Professional Football President.

In March 2008, Oporto's Tribunal de Instrução Criminal decided that one of these cases, concerning a match between FC Oporto and Beira-Mar, would proceed to trial. The other one, concerning a match between FC Oporto and Estrela da Amadora, was dismissed for the second time in June 2008 and the main accusation witness accused of perjury.

In July 2008, the Chairman of Boavista FC was found guilty of abuse of power but not guilty of corruption. He was sentenced to three years, two months of suspended jail time.

On 3 April 2009, the chairman of FC Oporto was acquitted on all charges related to the Beira-Mar-FC Porto match of the 2003-04 season by the Portuguese court on grounds that under the Portuguese legal framework, the phone recordings presented in trail should not admitted as a means of evidence, due to the fact that they have not previously authorized by the Instruction Judge.

Russian Federation / Fédération de Russie

Unofficial translation

Reply by the Russian Federation to Questionnaire Regarding the Work of the Council of Europe on the Issue of "Manipulation of Sports Results, Notably Match-Fixing"

The Russian legislation provides for responsibility for bribery of participants and organizers of professional sports and entertainment profit-making competitions in Article 184 of the Criminal Code of the Russian Federation.

"Criminal Code of the Russian Federation of June 13, 1996, No. 63-FZ

Article 184. Bribery of Participants and Organizers of Professional Sports and Entertainment Profit-making Competitions

1. Bribery of athletes, referees, coaches, team leaders, and other participants or organizers of professional sport competitions, and also organizers or jurymen of profit-making entertainment competitions, with the purpose of exerting influence on the results of these competitions or contests,

shall be punishable by a fine in the amount of up to 200 thousand roubles or in the amount of the wage or salary, or any other income of the convicted person for a period of up to 18 months, or by compulsory works for a term of 120 to 180 hours, or by corrective labour for a term of up to twelve months, or by arrest for a term of up to three months.

2. The same deed committed by an organized group,

shall be punishable by a fine in the amount of 100 thousand to 300 thousand roubles or in the amount of the wage or salary, or any other income of the convicted person for a period of one to two years, or by deprivation of liberty for a term of up to five years.

3. Illegal receipt by athletes of money, securities, or any other property transferred to them for the purpose of exerting influence on the results of said competitions, and also the illegal use by athletes of property-related services granted to them for the same purposes,

shall be punishable by a fine in the amount of up to 300 thousand roubles, or in the amount of the wage or salary, or any other income of the convicted person for a period up to two years, or by disqualification to hold specified offices or to engage in specified activities for a term up to three years, or by arrest for a term of up to six months.

4. Illegal receipt of money, securities, or any other property, illegal use of property-related services by referees, coaches, team leaders, and other participants or organizers of professional sports competitions, and

also by organizers or jurymen of profit-making entertainment competitions for the purposes referred to in the third paragraph of this Article,

shall be punishable by a fine in the amount of 100 thousand to 300 thousand roubles or in the amount of the wage or salary or other income of the convicted person for a period of one year to two years, or by deprivation of liberty for a term of up to two years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years.

Note. A person having committed an offence provided for by paragraphs one or two of this Article shall be exempt from criminal liability if he or she was subject to blackmail or voluntarily informed the body authorized to initiate criminal proceedings of the bribery."

Serbia / Serbie

1. Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results[66]?

No.

1.1. If yes: 1. Is that conduct subject to criminal, or administrative, or any other legal sanction?

2. Could you please attach the text of the provision(s) which provides for such a conduct (where available please attach an English or French text)

1.2. If not: 1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?

In Article 208. of Criminal Code of the Republic of Serbia is proscribed Fraud as general criminal offence and the counduct of manipulating sport results fall under that offence.

Fraud

Article 208

(1) Whoever with intent to acquire unlawful material gain for himself or another by false presentation or concealment of facts deceives another or maintains such deception and thus induces such person to act or not to act, all to the detriment of his or another's property, shall be punished with imprisonment of six months to five years and a fine.

(2) Whoever commits the offence referred to in paragraph 1 of this Article only with intent to cause damage to another, shall be punished with imprisonment from six months, and a fine.

(3) If by the offence referred to in paragraph 1 and 2 of this Article material gain is acquired or damages caused exceeding four hundred and fifty thousand dinars in value, the offender shall be punished with imprisonment of one to eight years, and a fine.

(4) If by the offence referred to in paragraph 1 and 2 of this Article material gain is acquired or damages caused exceeding million five hundred thousand dinars in value, the offender shall be punished with imprisonment of two to ten years, and a fine.

2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future?

In the next year, the Republic of Serbia are not planning to adopt specific legislation on this conduct.

[66] You could consider the definition of "manipulation of sports results" as contained in the Appendix to the Recommendation CM/Rec(2011)10 adopted by the Committee of Ministers on 28 September 2011 at the 1122nd meeting of the Ministers' Deputies. Specifically, it stated that "the expression "manipulation of sports results" covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition."

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?

We don't have information about the investigations in cases of manipulating sport results in the Republic of Serbia.

Slovenia / Slovenie

Slovenian answers to the questionnaire on the conduct of manipulating sport results

1. **Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results[1]?**

Please note that there are no specific provisions on the conduct of manipulating sport results in Slovenian Criminal Code (KZ-1 OJ of RS, nr. 55/08, 66/08-popr., 39/09, 91/11). However, such conduct could maybe (depending on the specific circumstances of the case) fall within the scope of a criminal offence of fraud (Article 211 of Criminal Code) or organising Money Chains and Illegal Gambling (Article 212, second paragraph, Criminal Code). Below please find unofficial text of the both Articles. Amendments (KZ-1B) to KZ-1 were adopted in November 2011 and will enter into force six month after KZ-1B was published in the Official Gazette of the Republic of Slovenia (namely 15. 5. 2012). Inter alia, with KZ-1B certain amendments were adopted also with regards to criminal offence of organising Money Chains and Illegal Gambling. Below please find marked amendments (track changes) to this offence in Article 212 of Criminal Code.

Fraud
Article 211

(1) Whoever, with the intention of acquiring unlawful property benefit for himself or a third person by false representation, or by the suppression of facts leads another person into error or keeps him in error, thereby inducing him to perform an act or to omit to perform an act to the detriment of his or another's property, shall be sentenced to imprisonment for not more than three years.

(2) Whoever, with the intention as referred to in the preceding paragraph of this Article, concludes an insurance contract by stating false information, or suppresses any important information, concludes a prohibited double insurance, or concludes an insurance contract after the insurance or loss event have already taken place, or misrepresents a harmful event, shall be sentenced to imprisonment for not more than one year.

(3) If the fraud was committed by at least two persons who colluded with the intention of fraud, or if the perpetrator committing the offence referred to in paragraph 1 of this Article caused large property damage, the perpetrator shall be sentenced to imprisonment for not less than one, and not more than eight years.

(4) If the offence referred to in paragraphs 1 or 3 of this Article was committed within a criminal association, the perpetrator shall be sentenced to imprisonment for not less than one, and not more than ten years

[1] You could consider the definition of "manipulation of sports results" as contained in the Appendix to the Recommendation CM/Rec(2011)10 adopted by the Committee of Ministers on 28 September 2011 at the 1122nd meeting of the Ministers' Deputies. Specifically, it stated that "the expression "manipulation of sports results" covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition."

(5) If small property damage has been incurred by the committing of the offence under paragraph 1 of this Article and if the perpetrator's intention was to acquire a small property benefit, he shall be punished by a fine or sentenced to imprisonment for not more than one year.

(6) Whoever, with the intention of causing damage to another person by false representation or the suppression of facts, leads a person into error or keeps him in error, thereby inducing him to perform an act or to omit to perform an act to the detriment of his or another's property shall be punished by a fine or sentenced to imprisonment for not more than one year.

(7) The prosecution for the offences under paragraphs 5 and 6 of this Article shall be initiated upon a complaint.

Organising Money Chains and Illegal Gambling
Article 212

(1) Whoever organizes, participates in, or helps organizing or performing money chains where participants pay certain amounts of money to organizers or other participants who are already included in the game or activity, and expect certain amounts of money to be paid by the participants who are to join such a game or activity after them, shall be sentenced to imprisonment for not more than three years.

Deleted: with a view to procuring an unlawful property benefit for himself or for a third person,

(2) Whoever, with the intention of acquiring an unlawful property benefit for himself or a third person organises, participates or helps in organising gambling, which was not issued an authorisation or concession by a competent authority, shall be punished to the same extent.

Deleted: , contrary to regulations,

Deleted: classic or special

Deleted: network gambling, or other gambling via electronic means of communication

(3) If a substantial property benefit has been gained by himself or by a third person by committing the offences under the above paragraphs, or substantial property damage has been caused to a third person, the perpetrator shall be sentenced to imprisonment for not more then five years.

Deleted: large

Deleted: large

Deleted: less than one, and not more than eight years

(4) If a large property benefit has been gained by himself or by a third person by committing the offences under the first or second paragraph, or large property damage has been caused to a third person, the perpetrator shall be sentenced to imprisonment for not less than one, and not more than eight years.

1.1. If yes: 1. Is that conduct subject to criminal, or administrative, or any other legal sanction?

2. Could you please attach the text of the provision(s) which provides for such a conduct (where available please attach an English or French text)

Sweden / Suède

1. Within your national legislation, regulations and case law is there any <u>specific</u> provision(s) on the conduct of manipulating sport results[67]?

   No

   1.1. <u>If yes</u>:
   1. Is that conduct subject to criminal, or administrative, or any other legal sanction?

      n/a

   2. Could you please attach the text of the provision(s) which provides for such a conduct (where available please attach an English or French text)

      n/a

   1.2. <u>If not:</u>
   1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?

Presently, acts of passive and active bribery in the context of sports could be prosecuted only if the athlete is considered to be an employee of the club.

Chapter 20, Section 2 of the Penal Code:
An employee who receives, accepts a promise of or demands a bribe or other improper reward for the performance of his duties, shall be sentenced for taking a bribe to a fine or imprisonment for at most two years. The same shall apply if the employee committed the act before obtaining the post or after leaving it. If the crime is gross, imprisonment for at most six years shall be imposed.

The provisions of the first paragraph in respect of an employee shall also apply to:
1. a member of a directorate, administration, board, committee or other such agency belonging to the State, a municipality, county council, association of local authorities, parish, religious society, or social insurance office,
2. a person who exercises a assignment regulated by statute,
3. a member of the armed forces under the Act on Disciplinary

[67] You could consider the definition of "manipulation of sports results" as contained in the Appendix to the Recommendation CM/Rec(2011)10 adopted by the Committee of Ministers on 28 September 2011 at the 1122nd meeting of the Ministers' Deputies. Specifically, it stated that "the expression "manipulation of sports results" covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition."

Offences by Members of the Armed Forces, etc. (1986:644), or other person performing an official duty prescribed by Law,

4. a person who, without holding an appointment or assignment as aforesaid, exercises public authority, and

5. a person who, in a case other than stated in points 1-4, by reason of a position of trust has been given the task of managing another's legal or financial affairs or independently handling an assignment requiring qualified technical knowledge or exercising supervision over the management of such affairs or assignment.

2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future?

Yes, new legislation is under preparation. A Government Bill will be presented early 2012, introducing i.a. a provision dealing with passive and active bribery in connection with all contests (not only sports) that are open to organised and legitimate betting.

The proposed provision has been devised by a Commission of inquiry. The Commission's report was published in June 2010 (SOU 2010:38).

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?

There are no such investigations or decisions known to the ministry.

Switzerland / Suisse

1. Existe-t-il, dans votre législation nationale, dans vos règlements et dans votre jurisprudence, une ou plusieurs disposition(s) spécifique(s) quant à la manipulation des résultats sportifs ?

Réponse :
Non, il n'existe actuellement ni dispositions spécifiques sur la manipulation des résultats sportifs, ni un énoncé de fait légal général pour la fraude sportive.

1.1 Si oui:

Réponse :
Néant

1.2 Si non:

1.2.1 Est-ce que selon votre législation, la manipulation de résultats sportifs (ou certaines formes de ce comportement) relève d'une ou plusieurs infractions (pénales, administratives ou autres) ?

Réponse :
L'art. 146 du Code pénal définit les éléments constitutifs de l'escroquerie. Cet article est applicable aux cas de manipulation de résultats sportifs lorsque tous les éléments constitutifs de l'infraction sont réunis.

1.2.2 En raison de l'absence d'une législation spécifique dans votre système, envisagez-vous d'adopter une loi spécifique sur ce comportement à l'avenir ?

Réponse :
Cette question est à l'étude. Le Parlement a en effet chargé le Conseil fédéral (le gouvernement) de lui présenter un rapport à ce sujet d'ici à la fin de 2012. Le Conseil fédéral est chargé de vérifier :

- *quelles sont les dispositions actuellement applicables, aux niveaux national et international, dans le domaine du sport en ce qui concerne la lutte contre la corruption et les matchs truqués et quels sont les efforts entrepris pour remédier à la situation;*
- *si les instruments existants suffisent pour affronter la complexité croissante des problèmes liés à la corruption et aux matchs truqués dans le domaine du sport, que ce soit au niveau national ou international;*
- *s'il y a lieu de prendre des mesures législatives visant, d'une part, à améliorer les moyens actuellement mis en œuvre sur les plans national et international pour lutter contre la corruption et les matchs truqués et, d'autre part, à assurer une prévention active de la corruption.*

2. S'il y a déjà eu dans votre pays des enquêtes sur des cas de manipulation de résultats sportifs, pourriez-vous s'il vous plaît fournir toute information pertinente sur la façon dont les organes d'application de la loi (police, procureurs et tribunaux) se sont occupés de tels cas (les enquêtes ont-elles été couronnées de succès, les suspects ont-ils été identifiés et poursuivis, les sanctions pénales et administratives ont-elles été appliquées)?

Réponse :
Nous n'avons pas connaissance actuellement de cas ayant nécessité l'intervention d'autorités d'instruction suisses. Par contre, certains matchs de football ont déjà fait l'objet de manipulations étrangères. Neufs joueurs de football ont notamment été suspendus en Suisse suite à l'affaire des matchs truqués mise au jour par le Ministère public de Bochum en Allemagne. La décision a été prise par la Commission pénale et de contrôle de l'Association suisse de football.

Turkey / Turquie

QUESTION 1-Are there any special provision(s) in your internal law, arrangements and precedents regarding manipulation of sports results?

If yes:

a) Is this act subject to criminal, administrative or other legal sanctions?

b) Can you send the texts of these provisions regarding this act as enclosures?
(if available, add the ones in English or French in these languages)

If no:

a) Does manipulation of sports results (or its specific forms), in accordance with your law, fall into the scope of more than one applicable offence (of criminal, administrative nature or other natures)?

b) Will there be created a legal framework regarding this act in the near future since there are no specific provisions in your system?

ANSWER 1- There are special arrangements in Turkish law regarding manipulation of sports results.

a) Law No. 6222 on the Prevention of Sports Violence and the Irregularity entered into force following the publication of it in the Official Gazette dated 14/4/2011 and numbered 27905.

- In article 11 of the Law No. 6222, it has been stipulated that those persons who provide financial profit or other advantages or who are provided advantage or who contribute to the finalization of sports competitions in line with agreement by knowing the presence of match-fixing shall be sentenced to a penalty of imprisonment for a term of five years to twelve years and a judicial monetary fine up to twenty thousand days.

In the same article, if the offence is committed in favour of sports clubs or other legal persons, it has been stipulated that they shall also be penalized with an administrative monetary fine up to the amount of match-fixing or incentive pay; however, the administrative monetary fine to be imposed shall not be less than a hundred Turkish Liras.

In the afore-mentioned article, it has been provided that if the offence of match-fixing is committed in order to influence the results of odds betting, the penalty to be imposed shall be increased by half. (Enclosure: 1)

However, the penalty of imprisonment for a term of ‘‘five years to twelve years’’ stipulated for match-fixing in article 11 of the Law No.6222 has been amended as penalty of imprisonment for a term of ‘‘one year to three years’’ with the amendment to the law ratified at the session held on 24/11/2011 by the General Council of Turkish National Grand Assembly.

- There was not a legal arrangement stipulating a special criminal sanction on the manipulation of sports results (match-fixing and incentive pay) in Turkish law until the date of 14/4/2011. Until this date, general arrangements in Turkish law were applied to the people manipulating sports results.
- General Directorate of Sports Amateur Sports Branches Criminal Regulations prepared for the purposes of organising Boards of Criminal Department to help training of disciplined healthy generations, to ensure discipline in amateur sport activities, determining acts constituting disciplinary actions and their sanctions in accordance with international basis and practises entered into force following the publication in the Official Gazette dated 7/1/1993 and numbered 21458. In accordance with the articles 47 and 49 of the afore-mentioned Regulations, it has been stipulated that those making or doing fraudulent and staged competition and mediators shall be sentenced to a penalty of disqualification from

competition for a term of at least one year or a deprivation of right for the same term and organisations shall be penalized with relegation; those competing by obtaining material advantage from organisations and persons likely to benefit from the results of the competitions, those offering, providing or giving material advantage to the ones competing in this way shall be penalized with disqualification from competition for a term of six months to two years or a deprivation of right for the same term. (Enclosure: 2)

- Administrative sanctions in parallel with the above-mentioned provisions of Regulations have also been stipulated about the people manipulating sports results in criminal and discipline instructions of Independent (Autonomous) Sports Federations outside football.

- In article 58 of Autonomous Turkey Football Federation Football Discipline Instruction, it has been stipulated that it shall be forbidden to manipulate or attempt to manipulate the results of competitions in compatible with law or sports ethics or furnishing incentive pay to a football player or club shall fall into the same scope, those violating this provision shall be penalized with disqualification from competitions or deprivation of right for a term of one year to three years; clubs shall be penalized with relegation, as per the severity of violation , penalty of downpoint may be imposed in addition to the penalty of relegation, people or clubs having responsibility in the violation shall also be penalized with monetary fine. (Enclosure: 3)
- In article 59 of Autonomous Turkey Football Federation Football Discipline Instruction, it has been stipulated that the administrators of the clubs which are in the professional league, match officials and other officials and football players shall be forbidden to participate in the odds betting or similar gambling games organised relating to football matches, those acting otherwise shall be penalized with disqualification from competitions or with deprivation of right for a term of three months to one year. (Enclosure 3)

- In article 5 of the Law no. 7258 regarding Provision of Betting and Luck Games in Football and Other Sportive Competitions, the following arrangements have been made:

Those organising fixed odds betting or mutual betting in respect of sports competitions, or providing a place or opportunity for them to be played without the authorisation of the Law shall be sentenced to a penalty of imprisonment for a term of one year to three years and they shall be penalized with monetary fine up to ten thousand days,

Those providing opportunity for having every kind of betting or gambling games abroad played in Turkey by internet or other means shall be sentenced to a penalty of imprisonment for a term of two years to five years,

Those mediating money transfers related to any kind of odds betting or gambling games shall be sentenced to a penalty of imprisonment for a term of one year to three years and shall be penalized with judicial monetary fine up to five thousand days. (Enclosure: 4)

QUESTION 2- If there are investigations conducted in your country regarding manipulation of the sports results, can you give us any related kind of information (as to how law enforcement agencies (the police, prosecutor's office and courts) handle these cases (for example, has the

investigation become successful, have the suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?

ANSWER 2- In our country, there is a large scale investigation initiated by the police and prosecutor's office relating to the manipulation of the sports results (match-fixing) in professional football leagues. In this context, vacation courts have issued arrest warrants from July 2011 until today about nearly 30 people notably club administrators, coaches, managers and football players; the related people are still in prison. Besides, legal procedure about many people continues. Since confidentiality decision has been taken in the investigations, and a bill of indictment has not been prepared, it is has not been possible to provide and send information and documents at this stage legally.

Moreover, there are cases filed for the offence of aggravated fraud due to match-fixing and illegal odds betting with Basis no 2010/523 in Diyarbakir 5th Aggravated Felony Court and with Basis no 2010/197 in Beyoglu 3rd Aggravated Felony Court. (Enclosure: 5) (Enclosure: 6)

People and the related clubs about whom judicial investigation has been initiated or who are prosecuted have been sent to the board of discipline within the context of discipline instructions of sports federations stated in the first article above and sportive corrections stipulated in the legislation have been applied about them. Disciplinary investigations still continue about some people and clubs deliberatively sent to the boards of discipline.

Annex 1

6222
Law on the Prevention of Sports Violence and the Irregularity

THIRD SECTION
Illegal Acts and Criminal Provisions

Article 0011: Match-fixing and incentive pay

(1) Those persons who provide financial profit or other advantages to another person in order to influence a specific sports competition shall be sentenced to a penalty of imprisonment for a term of five years to twelve years and shall be penalized with a judicial monetary fine up to twenty thousand days. The person to whom an advantage is provided shall also be penalized as accomplice for this offence. Even when agreed on providing financial profit or other advantages, the penalty shall be imposed as if the offence is completed.

(2) Those people contributing to the finalization of sports matches in line with the agreement by knowing the presence of match-fixing agreement shall also be penalized in accordance with the first provision.

(3) Penalty shall be imposed if there is a promise or proposal for financial profit or other advantages, if not agreed, as the offence is at the attempt stage.

(4) The penalty to be imposed shall be increased by half if the offence is committed:

a. By misusing the trust or influence provided by public officer,
b. By the head of administrative board or its members of the sports club,
c. Within the activity of an organisation established for committing offence,
d. For influencing the results of odds betting.

(5) If the offence is committed by furnishing or promising incentive pay for the team to be successful in a competition, the penalty to be imposed as per the provisions of this article shall be decreased by half.

(6) The provisions of this article shall not apply if incentive is given or promised for the following purposes:

a. Ensuring the national teams or national football players to become successful,
b. Ensuring their team players or technical committee to become successful in a match by the sports clubs.

(7) If the offence is committed in favour of the sports clubs or other legal people, they shall also be penalized with an administrative monetary fine up to the amount of match-fixing or incentive pay. However, the amount of the administrative monetary fine to be imposed cannot be less than ten thousand Turkish Liras.

(8)Penalty shall not be imposed on the person helping the discovery of the offence before the competition.

Annex 2

General Directorate of Youth and Sports Amateur Sport Branches Criminal Regulations From the General Directorate of Youth and Sports		R.T. The Official Gazette 07.01.1993 21458
Legal Basis	21.05.1986-3289	

FOURTH SECTION
Youth and Sports Offences

FIRST PART
Offences Committed Against the Organisation

Article 0047: Fraudulent and Staged Competition

Those doing fraudulent and staged competitions, or organising them and mediators shall be sentenced to a penalty of disqualification from competitions for a term of at least one year or deprivation of right for the same period.

Organisations shall be penalized with relegation.

General Directorate of Youth and Sports Amateur Sport Branches Criminal Regulations From the General Directorate of Youth and Sports		R. T. The Official Gazette
Legal Basis	21.05.1986-3289	07.01.1993 21458

FOURTH SECTION
Youth and Sports Offences

FIRST PART
Offences committed against the Organisation

Article 0049: Advantage in Other Circumstances

Those competing by obtaining material advantage from organisations and people likely to benefit from the results of the competitions, those offering, providing or giving material advantage to the ones competing in this way shall be penalized with disqualification from competitions for a term of six months to two years or a deprivation of right for the same term.

Annex 3

FOOTBALL DISCIPLINE INSTRUCTION

INFLUENCING THE RESULTS OF COMPETITIONS

ARTICLE 58- (1) It shall be forbidden to influence or attempt to influence the results of competitions contrary to law or sports ethics. Giving incentive pay to a football player or a club shall fall into this scope.

(2) Those violating this provision shall be penalized with disqualification from competitions or deprivation of right for a term of one year to three years; clubs shall be penalized with relegation. As per the severity of violation, penalty of downpoint may be imposed in addition to the penalty of relegation.

(3) Persons or clubs having responsibility in the violation shall also be penalized with monetary fine.

(4) In case of violation of this forbidden act by referees, penalty of continuous deprivation of right shall be imposed.

BETTING

ARTICLE 59-(1) It shall be forbidden for the administrators of the clubs which are in the professional league, match officials and other officials and football players to participate in the odds betting or similar gambling games directly or indirectly.

(2) Those acting otherwise shall be penalized with disqualification from competitions or with deprivation of right for a term of three months to one year.

Annex 4

7258
Law on Provision of Betting and Luck Games in Football and Other Sportive Competitions

Article 0005:
(amended version with article 256 of the Law No. 5728 published in the Official Gazette dated 08.02.2008 and numbered 26781)

Those organising fixed odds betting or mutual betting in respect of sports competitions, providing a place or possibility for them to be played without the authorisation of the Law shall be sentenced to a penalty of imprisonment for a term of one year to three years and they shall be penalized with monetary fine up to ten thousand days.

Those providing opportunity for having every kind of betting or gambling games abroad played in Turkey by internet or other means shall be sentenced to a penalty of imprisonment for a term of two years to five years.

Those mediating money transfers related to any kind of odds betting or gambling games shall be sentenced to a penalty of imprisonment for a term of one year to three years and shall be penalized with judicial monetary fine up to five thousand days.

Those inducing any kind of odds betting and gambling games by advertising or by other means shall be sentenced to a penalty of imprisonment for a term of six months to two years and shall be penalized with judicial monetary fine up to three thousand days.

In connection with the offences defined in this article, any property allocated for playing any kind of betting or gambling games or any property used in these games or forming the subject to the offence and the amount of any kind of asset value presented for playing these games or obtained by playing them shall be confiscated as per the provisions regarding the confiscation of properties and gains of Turkish Criminal Law dated 26.09.2004 and numbered 5237.

Security precautions shall be imposed special to legal people due to the offences defined in this article.

The provisions regarding The Law no: 5651 dated 04.05.2007 on the ‘‘Regulation of Broadcasts via Internet and Prevention of Crimes Committed Through such Broadcasts” shall apply with respect to the offences defined in this article.

United Kingdom / Royaume-Uni

1. Within your national legislation, regulations and case law is there any specific provision(s) on the conduct of manipulating sport results[68]?

   1.1. If yes:
   1. Is that conduct subject to criminal, or administrative, or any other legal sanction?
   2. Could you please attach the text of the provision(s) which provides for such a conduct (where available please attach an English or French text)

   1.2. If not:
   1. Does – in accordance with your law – fall the conduct of manipulating sport results (or certain forms thereof) under one or more other applicable offences (criminal, or administrative, or of any other nature)?
   2. Due to the lack of a specific provision in your system, is a specific legislative framework on this conduct going to be adopted in the near future?

Answer:

In the Gambling Act 2005 there is the provision for the offence of cheating.

Cheating
This section has no associated Explanatory Notes
(1)A person commits an offence if he—
(a)cheats at gambling, or
(b)does anything for the purpose of enabling or assisting another person to cheat at gambling.
(2)For the purposes of subsection (1) it is immaterial whether a person who cheats—
(a)improves his chances of winning anything, or
(b)wins anything.
(3)Without prejudice to the generality of subsection (1) cheating at gambling may, in particular, consist of actual or attempted deception or interference in connection with—
(a)the process by which gambling is conducted, or
(b)a real or virtual game, race or other event or process to which gambling relates.
(4)A person guilty of an offence under this section shall be liable—
(a)on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
(b)on summary conviction, to imprisonment for a term not exceeding 51 weeks, to a fine not exceeding the statutory maximum or to both.

2. If there have already been investigations in cases of manipulating sport results in your country, could you please provide any relevant information on how the law enforcement agencies (police, prosecution and

[68] You could consider the definition of "manipulation of sports results" as contained in the Appendix to the Recommendation CM/Rec(2011)10 adopted by the Committee of Ministers on 28 September 2011 at the 1122nd meeting of the Ministers' Deputies. Specifically, it stated that "the expression "manipulation of sports results" covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition."

courts) have dealt with those cases (i. e. have investigations been successful, suspects been identified and prosecuted, have criminal or administrative sanctions been applied)?

Answer :

The most high profile court case that resulted in a successful prosecution was the recent cricket spot fixing case. As reported in the media, Pakistani cricketers Butt, Amir and Asif were convicted under the Prevention of Corruption Act 1906 and for 'conspiring to cheat' under section 42 of the Gambling Act 2005. All three were given jail sentences.

All the involvement in the investigation of cases is by the Gambling Commission (the Commission). The Department for Culture, Media and Sport (DCMS) does not have any direct involvement in them.

Another investigation that resulted in a criminal caution followed a joint investigation into cheating at gambling at Coventry Greyhound Stadium by the Commission with support from the Greyhound Board of Great Britain (GBGB).
A man was cautioned by the Commission under section 42 of the Gambling Act 2005, following an operation which arose from a suspicious betting report. The criminal investigation found no evidence of a link between those operating the track and the individual placing the bets.

There are several ongoing police investigations that could lead to criminal sanctions, including one in snooker and one in football (but due to the nature of these investigations, we can't give any further details).

Another case investigated by Strathclyde police regarding snooker players Stephen Maguire and Jamie Burnett, which was supported by the Gambling Commission, was found to have insufficient evidence to pursue a criminal prosecution by the Scottish Crown Counsel.

The case against cricketer Mervyn Westfield is due to go to court (and possible prosecution) following Essex polices investigation in January 2012.

A number of cases have been passed to Sports Governing Bodies (SGBs) in the UK and these figures are included in our most recent document on 'Industry Statistics 2009/2010'. The link to the page is here : Integrity in Betting (see page 15).

One of these SGB cases included the Coventry Greyhound Stadium investigation mentioned above. This resulted in the GBGB bringing charges against someone for being in breach of certain rules relating to the advertised start time of races, the control of licensed personnel on a racecourse and acting in a manner prejudicial to the integrity, proper conduct and good reputation of greyhound racing.

APPENDIX XVI

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

30.10.2012

QUESTIONNAIRE TO THE CDPC DELEGATIONS

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

APPENDIX XVII

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 15/11/2012 PC-OC (2012) 13
[PC-OC/Documents2012/PC-OC(2012)13]
http://www.coe.int/tcj/

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
(PC-OC)

List of decisions taken at the 63rd meeting of the PC-OC
Under the Chairmanship of Mr Per Hedvall (Sweden)

Strasbourg
13-15 November 2012

1 Adoption of the agenda

The PC-OC decided to adopt the agenda as reflected in document PC-OC(2012)OJ2 rev.

2. Finalisation of draft guidelines on practical measures to improve co-operation in respect of transfer of proceedings including a model request form

The PC-OC considered the draft guidelines and the appended model request form proposed by the PC-OC Mod (PC-OC Mod (2012) 01 Rev 3)

and decided to:

- adopt the guidelines and the model request form with some amendments;
- present the guidelines and model request form to the CDPC with the proposal to publish them as a practical PC-OC tool for practitioners, taking into account that the guidelines are of a technical nature and might need to be regularly updated;
- subject to the approval of the CDPC, instruct the Secretariat to publish the guidelines and model request form on the PC-OC website.

3. Presentation and content of the PC-OC website

The PC-OC took note of the information provided by the Secretariat about the development of the website including in particular the publication of the Index of case law by the European Court of Human Rights (ECtHR) of relevance for the application of the European Conventions on international judicial co-operation in criminal matters. The PC-OC also took note of the opinion of the PC-OC Mod regarding the inclusion in the index of decisions on admissibility and decided:

- not to include decisions on admissibility in the index.

- With regard to the draft summaries of relevant case law of the ECtHR

The PC-OC considered the draft summaries (contained in Document PC-OC (2011)21rev4, thanked Mr Dupraz (France), Ms Goeth-Flemmich (Austria), Mr Kubicek (Czech Republic), and Mr Verbert (Belgium) for their excellent work, discussed possible editorial improvements to the document and decided to:

- ask the authors, in co-operation with the Secretariat and the Chair, to finalise the document as discussed;
- agree on having the names of the authors published on the cover page;
- instruct the Secretariat to publish the index and the summaries on the PC-OC website;
- invite members of the PC-OC to inform the Secretariat of any further decisions of the ECtHR of relevance for international co-operation in criminal matters;
- instruct the PC-OC Mod to ensure the regular updating of the document on case law.

- With regard to the proposals to improve country information

The PC-OC considered the inventory of country information available on the PC-OC website as contained in document PC-OC(2012)09, recalled the importance that the PC-OC website contains complete and updated country information for the use of practitioners, and decided to:

- reiterate its call on all members and states parties to the European conventions on international co-operation in criminal matters to submit and when necessary send an update of the required information to the Secretariat as regards, in particular, the list of officials involved in the practical application of the conventions on extradition, mutual legal assistance in criminal matters and transfer of sentenced persons (PC-OC INF 6), the network of single points of contact and the list of competent authorities in respect of the application of Articles 13 and 15 of the European Convention on Mutual Assistance in Criminal Matters;
- call on all members and states parties to the European conventions on international co-operation in criminal matters to send links to websites of national central authorities or judicial bodies involved in international co-operation in criminal matters to the Secretariat in view of their publication on the website of the PC-OC;
- instruct the Secretariat to amend the inventory of country information as indicated by the PC-OC and keep it updated;
- instruct the PC-OC Mod to consider the inventory of country information available and report to the plenary on which information should be maintained and the reasons why.

- With regard to the access to and use of the forum

The PC-OC considered the request by Eurojust to be granted an access to the online forum reserved for members of the PC-OC and representatives of observer states parties to the conventions that are within the remit of the PC-OC and decided:

- not to open up access to other interested observers at the moment, taking into consideration that the forum is at an early stage of development.

4. Possible ways of allowing practitioners to submit questions to the PC-OC

The PC-OC welcomed the publication online and in paper form of a coloured leaflet containing information on the PC-OC for distribution to national practitioners involved in international co-operation in criminal matters. The PC-OC had an exchange of views on possible good practices for dissemination at a national level and underlined that it is essential that the leaflet be available also in non official languages of the Council of Europe. It was decided to:

- encourage members to translate the text into their national languages and submit it to the Secretariat for publication, subject to applicable Council of Europe publication rules as well as available budgetary resources, as an “unofficial translation”, on the PC-OC website and as a paper version;
- resume the discussion on dissemination at future meetings so as to exchange information on experiences and best practices.

5. Practical problems and concrete cases concerning the implementation of conventions

a. With regard to recent developments and forum discussions related to extradition, mutual assistance and transfer of sentenced persons

The PC-OC took note of the recent developments presented by PC-OC Rapporteur Ms Barbara Goeth-Flemmich (Austria) on transfer of sentenced persons. It noted in particular the information on the implementation by the EU member States of the Framework decision on the transfer of sentenced persons. Ms Goeth-Flemmich also informed the PC-OC of difficulties of implementation encountered in some states Parties to the Additional Protocol to the Convention on the Transfer of Sentenced Persons, in cases where the person concerned did not give his or her consent for the transfer. She proposed that the PC-OC discuss this issue at a future meeting, and consider the possibility to gather information on national legislation and procedures with regard to conditional release and to measures involving deprivation of liberty (for example for mentally ill persons, dangerous offenders etc) . The PC-OC decided to:

- invite Parties to the Additional Protocol to the Convention on the Transfer of Sentenced persons to send examples of practical difficulties encountered to Ms Goeth-Flemmich and to the Secretariat;
- instruct the Secretariat to collect information from PC-OC members on national legislation and procedures with regard to conditional release and measures involving deprivation of liberty, in view of the special session foreseen on transfer of sentenced persons;
- instruct the PC-OC Mod to consider the information received and to report back to the plenary.

The PC-OC also listened with interest to the information presented by its Rapporteur on extradition, Mr Erik Verbert (Belgium), and welcomed the developments as regards his recent contacts with the authorities of South Africa.

b. With regard to the feasibility of developing guidelines on the use of video conferences in the context of mutual legal assistance

The PC-OC considered the need and feasibility of developing guidelines dealing with the technical aspects of the use of video conferences in the context of mutual legal assistance, took note of the conclusions of the PC-OC Mod and decided:

- that given the rapid evolution of technology and the lack of technical knowledge within the PC-OC it would not be useful or feasible at this stage to develop such guidelines.

The PC-OC exchanged experiences on the use of video conferences and decided:

- to continue discussions on this issue at its next meeting during a special session devoted to mutual assistance in criminal matters;
- instruct the Secretariat to remind all experts to send in proposals on other issues to be discussed during the special session;
- to instruct the PC-OC Mod to prepare the special session.

c. With regard to the draft note on discussions held on “the relationship between extradition and deportation/expulsion” and possible follow up

The PC-OC considered the draft note as proposed by the PC-OC Mod (PC-OC(2012)08rev) and decided to:

- approve the note with one amendment;
- instruct the Secretariat to publish the note on the public website of the PC-OC.

The PC-OC furthermore considered the need and feasibility of further follow-up and decided, taking into account the viewpoint of the PC-OC Mod, that at this stage, further follow-up would not be necessary.

d. With regard to the draft questionnaire on “*in absentia* cases” in connection with Article 3 of the Second Additional Protocol to the European Convention on Extradition

The PC-OC considered the draft questionnaire as proposed by the PC-OC Mod (document PC-OC(2011)22rev5), agreed on the text with some amendments and decided to:

- instruct the Secretariat to send it out to all PC-OC members and parties to the European Convention on Extradition and make a summary of the answers received;
- instruct the PC-OC Mod to consider the replies received and make proposals for follow-up.

e. With regard to other issues

1. The PC-OC had a discussion on a question addressed to it by the CDPC Bureau and raised by two member states concerning the application of Article 12 of the Council of Europe Convention on the Transfer of Sentenced Persons.

The PC-OC concluded that it is their common understanding that Article 12 allows both the sentencing state and the administering state to grant pardon, amnesty or commutation of the sentence. Several experts underlined that the aim of the Convention is to allow sentenced persons to serve the remainder of their sentence in their own society so as to facilitate their rehabilitation and that the successful application of this Convention requires a climate of mutual trust between parties. A legal question was raised about the possible application of the reciprocity principle to reservations and declarations under this Convention.

The majority of the PC-OC members present decided:

- that expertise on international public law was needed to address this question;

- to instruct the PC-OC Mod to take into account the discussion on the issue raised in the general context of further consideration of problems related to the implementation of the Convention on the Transfer of Sentenced Persons.

The expert from Azerbaijan opposed these decisions.

2. The PC-OC had an exchange of views and experiences on a question raised by Ms Merja Norros (Finland) with regard to the service of documents to defendants under penalty of fine (discussion paper PC-OC(2012)11) in application of the Convention on mutual assistance in criminal matters and decided to:

- instruct the PC-OC Mod to consider possible follow-up to this issue and report back to the plenary at its next meeting, in the context of the special session that will be devoted to mutual assistance in criminal matters.

3. The PC-OC also heard a question raised by the Mr Mario Affentranger (Switzerland) with regard to the possibility of requesting an audition of prosecuted persons of Russian nationality from the Russian Federation in application of the Convention on mutual assistance in criminal matters. The PC-OC took note of the information provided by the Russian expert as regards the planned amendments to Russian legislation on mutual assistance as well as on alternative solutions available for the time being.

6. Special session on issues concerning the implementation of the European Convention on Extradition

Due to disturbances in the building, the special session had to be cancelled.

The PC-OC heard nevertheless an intervention on the extradition system in Korea by Mr Sang Joon Cho, Senior Prosecutor and Director of the International Criminal Affairs Division of the Ministry of Justice of the Republic of Korea and had an exchange of views.

The PC-OC decided to discuss at a future meeting a question raised by Ms Joana Ferreira (Portugal) concerning extradition and the effects of violation of immunity provided by the rule of speciality.

7. Election of the Chair and the vice-Chair of the Committee

Further to the expiry of the second and last term of the chairmanship of Mr Per Hedvall (Sweden) and vice-chairmanship of Mr Erik Verbert (Belgium), the PC-OC elected Ms Selma de Groot (Netherlands) as Chair and Mr Per Hedvall (Sweden) as its vice-Chair for a term of one year, starting in 2013.

The PC-OC expressed its gratitude to Mr Hedvall and Mr Verbert for the excellent work accomplished over the last two years.

8. Composition of the PC-OC Mod

The PC-OC decided to renew the composition of its working group the PC-OC Mod, which is in charge of executing the tasks entrusted to it, to ensure continuity between meetings and to prepare the next meeting. As from 2013, the PC-OC-Mod would be composed of the Chair, the vice-Chair and the following 7 elected experts:

Mr Stéphane Dupraz (France)
Ms Barbara Goeth-Flemmich (Austria)
Mr Miroslav Kubicek (Czech Republic)
Mr Eugenio Selvaggi (Italy)
Ms Malgorzata Skoczelas-Raczkosa (Poland)
Mr Erik Verbert (Belgium)
Mr Vladimir Zimin (Russian Federation).

All other PC-OC members are free to participate without defrayal of expenses.

9. Points for information and any other business

The PC-OC took note of the information provided by:

- Mr Jan Kleijssen, Director of the Directorate of information society and action against crime, and in particular on the opening for signature of the Fourth Additional Protocol of the European Convention on Extradition on 20 September 2012 as well as on the ongoing review of the Council of Europe Conventions by the Rapporteur Group on Legal Co-operation (GR-J);
- Mr Carlo Chiaromonte, Head of the Criminal Law Division, on the Resolution adopted at the 31st Council of Europe Conference of Ministers of Justice which took place in Vienna (Austria) on 19-21 September 2012, as well as on the activities of the CDPC;

- the Secretary to the PC-OC on recent signatures and ratifications of the Third and the Fourth Additional Protocols to the European Convention on Extradition and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters;
- Ms Eleni Loizidou (Cyprus), on behalf of the EU Presidency, on recent activities and developments of interest to the PC-OC in the European Union;
- Ms Ianina Lipara, representative of the European Judicial network (EJN), as regards the development and improvement of their website.

10. Dates of the next meetings

The PC-OC decided to hold its plenary meetings in 2013 from 28 to 30 May and from 26 to 28 November.

The meetings of the PC-OC Mod would take place from 6 to 8 March and from 9 to 11 October 2013.

APPENDIX XVIII

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 13 November 2012 PC-OC Mod (2012) 01Rev4
[PC-OC/Docs GM 2012/ PC-OC Mod (2012) 01Rev 4 E]
http://www.coe.int/tcj

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
PC-OC

Guidelines on practical measures to improve co-operation in respect of transfer of proceedings, including a model request form

Adopted by the PC-OC during its 63rd plenary meeting (13-15 November 2012°

Background

The PC-OC decided at its plenary meeting from 14 to 17 June 2011 (60th meeting) to send out a questionnaire to all delegations related to the transfer of proceedings and jurisdiction so as to gather information about the application of the relevant Council of Europe instruments and to assess the need for initiatives to improve their effectiveness or for the development of a new instrument in this field.

The following instruments and/or specific provisions were covered by the questionnaire:
- The European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73);
- Laying of information under Article 21 of the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30);
- Transfer of proceedings as an alternative to extradition: the application of the '*aut dedere, aut judicare*' principle under Article 6, paragraph 2, of the European Convention on Extradition (ETS No. 24).

The questionnaire, its introductory note and the compendium of replies are contained in Document PC-OC (2011)14. A summary of the replies is contained in Document PC-OC (2011) 16 rev.

The PC-OC considered, at its plenary meeting from 6 to 9 December 2011 (61st meeting), the replies to the questionnaire as well as the follow-up to be given and decided:

- to develop practical guidelines, if appropriate contained in a legal instrument, in respect of transfer of proceedings *inter alia* in application of the European Convention on the Transfer of Proceedings in Criminal Matters, of Article 21 of the European Convention on Mutual Assistance in Criminal matters and Article 6, paragraph 2 of the European Convention on Extradition. The guidelines would *inter alia* address the following issues:
  - bilateral consultation between the requesting and the requested states before, during and after (feedback) the submission of requests for co-operation;
  - proportionality of the case with regard to the procedure initiated and the appropriateness of submitting the request;
  - ways to accelerate and facilitate procedures so as to avoid impunity while lowering costs and efforts involved (eg. by suggested time limits to react to a request; development of a model form for submitting requests, including a coversheet and/or a summary; reconsider translation requirements and burden of costs);
  - ways to deal with differences in national legislation as regards extraterritorial jurisdiction;
  - admissibility of evidence, and mandatory and discretionary prosecution;
- to instruct its working group, the PC-OC Mod, to elaborate draft guidelines for consideration at its next plenary meeting;
- to keep the CDPC informed on future developments.

The PC-OC Mod discussed, during its meeting on 22-23 March 2012 (13th meeting), the outline for draft guidelines prepared by the Secretariat and decided to ask the Secretariat to amend the draft outline on the basis of the discussions held and to present it to the PC-OC plenary for consideration and further guidance.

The PC-OC Mod also discussed the possible status of the guidelines. It considered the possibility of appending them to a recommendation or declaration of the Committee of Ministers to member states but decided to postpone further discussion on this point until the content and nature of the guidelines are defined.

During its 62nd meeting on 9-11 May 2012, the PC-OC considered and endorsed the approach proposed for the draft outline for practical guidelines proposed by the PC-OC Mod (PC-OC Mod (2012) 01 Rev) as well as for the model request form on laying of information (contained in document PC-OC (2012)06), made suggestions for their further development and instructed the PC-OC Mod to:
- finalise the draft guidelines and the model request form, taking into account the comments made by the plenary and to present it for consideration at its next plenary meeting.

The PC-OC Mod finalised the draft guidelines and the appended model request form during its 14th meeting on 26-28 September 2012 for consideration by the PC-OC plenary. It proposed that the plenary adopt these guidelines as a practical PC-OC tool, taking into account their technical nature and the need for their regular update.

During its 63rd plenary meeting (13-15 November 2012), the PC-OC considered the draft guidelines and the appended model request form proposed by the PC-OC Mod (PC-OC Mod (2012) 01 Rev 3) and decided to :

- adopt the guidelines and the model request form with some amendments;
- present the guidelines and model request form to the CDPC with the proposal to publish them as a practical PC-OC tool for practitioners, taking into account that the guidelines are of a technical nature and might need to be regularly updated;
- subject to the approval of the CDPC, instruct the Secretariat to publish the guidelines and model request form on the PC-OC website.

Guidelines on practical measures
to improve co-operation in respect of transfer of proceedings,
including a model request form

General introduction (rationale of the guidelines)

In reply to the questionnaire on transfer of proceedings and jurisdiction sent out in 2011 to members of the PC-OC, many delegations reported practical difficulties in applying transfer of proceedings on the basis of the European Convention on the Transfer of Proceedings in Criminal Matters, of Article 21 of the European Convention on Mutual Assistance in Criminal matters and of Article 6, paragraph 2 of the European Convention on Extradition.

Any decision to transfer proceedings is made in the interest of justice and serves to determine which jurisdiction is in the best position to prosecute. However, each legal instrument mentioned above has its own legal procedure and conditions to be observed. In addition, each case is unique and any decision for transfer should therefore be taken on its individual facts and merits.

In taking these individual decisions, national authorities will observe the interest and good administration of justice which include not only legal considerations - the respect of the law, the relevant international legal instrument and the fundamental principles of law (such as the *ne bis in idem* principle) - but also practical considerations (such as avoiding unnecessary costs).

Guidance on the legal considerations can be found in the explanatory reports to the provisions of the relevant legal instruments, as well as in the various recommendations of the Committee of Ministers related to them. Particular reference is hereby made to Recommendation R(79) 12 concerning the application of the European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73). The texts of all relevant standards and reports are to be found on the website of the PC-OC (www.coe.int/tcj).

Guidance on the practical considerations, establishing a good practice for authorities so as to accelerate and facilitate procedures, to avoid unnecessary efforts or costs, is still lacking. The present guidelines and the model request form aim therefore at facilitating the practical aspects of the application of the legal instruments and its specific provisions mentioned above by proposing a step by step check-list of procedure for the requesting and the requested state.

These guidelines and the model request form address all practitioners involved in the application of the relevant conventions, including, but not only, the central authorities of States Parties.

These guidelines and the model request form are intended mainly for the transfer of proceedings, including requests for transfer under the European Convention on the Transfer of Proceedings in Criminal Matters, Article 21 of the European Convention on Mutual Assistance in Criminal Matters, Article 6(2) of the European Convention on Extradition and other similar instruments.

Central authorities responsible for the application of these conventions and other relevant instruments are encouraged to translate the present guidelines and model request form in their official languages and make them available to practitioners, for example by posting them on their national website.

Guidelines

A. Guidelines to the Requesting State

When considering making a request concerning transfer of proceedings, requesting states should:

1. Consider the legal basis allowing for transfer of proceedings, including the treaties ratified by the requested state, the declarations attached and the national legislation with regard to the jurisdiction of the requested

state and other issues of relevance. Attention should also be paid to the different alternatives to transfer of proceedings such as:

- the possibility to request extradition or, for EU member states, to issue a European Arrest Warrant;
- the possibility to make use of requests for mutual legal assistance in criminal matters (hearings of the persons concerned, including by videoconference, the summoning of persons or the temporary transfer of witnesses to the requesting state, etc.).

2. Consider the proportionality of the case with regard to the procedure initiated as well as its appropriateness taking into account the need to avoid impunity, the efficiency of proceedings and the specific requirements of the convention to be applied.

Transfer of proceedings to another state might notably be considered appropriate if that state has jurisdiction and can achieve the purpose of criminal proceedings more effectively. In this context account may be taken *inter alia* of the following considerations:

a. the nationality and place of residence of the suspected person;

b. the possibility that the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested state;

c. the place where the offence occurred and/or where the most important items of evidence can be found;

d. the possibility that proceedings are being taken against the suspected person for the same or different offences in the requested state;

e. the practicability to deal with all the prosecutions in the jurisdiction of the requested state in cases where the offence(s) occurred in several jurisdictions;

f. the possibility of the presence of the suspected person in the proceedings in the requesting or the requested state;

g. the willingness and ability of witnesses to travel and give evidence in the jurisdiction of the requested state;

h. the interests of victims and whether they would be prejudiced, for example in their possibilities to claim compensation, if any prosecution were to take place in one jurisdiction rather than another;

i. the likelihood that the enforcement in the requested state of a sentence, if one were passed, will improve the prospects for the social rehabilitation of the person sentenced;

j. the likelihood that the requesting state could not itself enforce a sentence, if one were passed, even by having recourse to extradition, and that the requested state could do so.

3. Proceed before submitting the request, if considered necessary, with an informal preliminary consultation (for example by phone, e-mail, videoconference or meetings) with the state or the states to which a request might be addressed so as to discuss:

- the appropriateness and potential success of the request envisaged;
- ways to deal with differences in national legislation (e.g. extraterritorial jurisdiction; admissibility of evidence, mandatory or discretionary prosecution);
- the timeframe and practicalities of the co-operation (contact persons, elements to be included in the request, translation requirements and costs etc.).

4. Decide as soon as possible whether or not to send a request. The request should include as far as possible all the evidence that can be collected in the requesting state.

5. Use, as appropriate, the model request form presented in the appendix to these guidelines.

6. When asked by the requested state, provide any supplementary information related to the request.

B. Guidelines to the Requested State

In order to facilitate co-operation the requested state should:

1. If the requesting state asked for an informal preliminary consultation as mentioned under Chapter A, guideline 3, provide clear indications on the legal and practical issues of importance to a successful and rapid follow-up to the request.

2. Once the request has been received and upon request from the requesting state, confirm receipt without delay and indicate the contact details of the person in charge of the request.;

3. If a request received is unclear or incomplete, consult the requesting state without delay.
Facilitate consultation with the requesting state, for example by promoting direct contact between the authorities involved in a particular case.

4. Take all possible measures to ensure that a decision on the request for the transfer of proceedings is taken without undue delay. If unforeseen delays occur, inform the requesting state. Inform the requesting state of any decision to accept or refuse the request.

5. If the decision has been taken to accept the request, keep the requesting state informed on the follow-up of the case by the competent authorities and send it a copy of the final decision.

Appendix to the Guidelines
on practical measures to improve co-operation
in respect of transfer of proceedings

MODEL REQUEST FORM

Request for: ……..

Made on the basis of:

□ The European Convention on the Transfer of Proceedings

□ Article 21 of the European Convention on Mutual Assistance in Criminal Matters

□ Article 6, paragraph 2 of the European Convention on Extradition

□ Other: _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

1. Requesting authority:

- Name of the requesting authority:
- Name and function of contact person:
- Address:
- Tel.:
- Fax:
- E-mail:
- Working language(s):

2. Requested authority

3. Person(s) who is/are the subject(s) of the request

- All information available on the person(s) concerned (identity, nationality, location, etc.)

4. Summary of facts (including date, place and conduct)

5. Legal qualification and provisions

- Legal qualification
- Legal provisions concerning the offence(s) and the maximum penalty applicable (in attachment)
- Legal provisions concerning lapse of time where appropriate (in attachment)
- Other legal provisions where appropriate (in attachment)

6. Information on the procedure in the requesting state (including action taken and evidence gathered)

7. Reason(s) for the request

□ the suspected person is ordinarily resident in the requested state

□ the suspected person is a national of the requested state or that state is his or her state of origin

□ the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested state

□ proceedings for the same or other offences are being taken against the suspected person in the requested state

□ the transfer of the proceedings is warranted in the interests of arriving at the truth/ the most important items of evidence are located in the requested state

□ the enforcement in the requested state of a sentence if one were passed is likely to improve the prospects for the social rehabilitation of the person sentenced

□ the presence of the suspected person cannot be ensured at the hearing of proceedings in the requesting state and his or her presence in person at the hearing of proceedings in the requested state can be ensured

□ the requesting state cannot itself enforce a sentence if one were passed, even by having recourse to extradition, and the requested state could do so

□ other:……

8. Additional information and requests

- Request for confirmation of receipt of the request for transfer of proceedings (possible special requirements with regard to the confirmation)
- Indication of available information or items not attached to the request
- Readiness to furnish translations
- Any other additional information or requests such as requests for provisional measures

9. Indication of attachments (copies of documents, files, items, etc.)

10. Signature and seal

APPENDIX XIX

1155th meeting – 21 November 2012

Appendix 10
(Item 11.1, Part 1)

Terms of reference of the Ad hoc Drafting Group on Transnational Organised Crime (PC-GR-COT)

Name of Committee: Ad hoc Drafting Group on Transnational Organised Crime (PC-GR-COT)

Category: Subordinate to the CDPC

Set up by the Committee of Ministers under Article 17 of the Statute of the Council of Europe and in accordance with Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods

Duration: **1 January 2013 - 31 December 2013**

Main tasks

Taking into account the serious risks to human rights, democracy and the rule of law posed by transnational organised crime and the strong political commitment of member States with regard to preventing and combating transnational organised crime, there is a need for the Council of Europe to provide an intergovernmental platform in order to enable a global, overall assessment of the character and dimensions of transnational organised crime in a pan-European context and the development of common policies and exchange of best practices with regard to the prevention and combating thereof. Accordingly, the PC-GR-COT shall be established under the authority of the European Committee on Crime Problems (CDPC). The PC-GR-COT shall, in particular, carry out the following tasks:

- the identification of relevant and emerging transnational organised crime issues which require a criminal law response;

- the development, in close co-ordination with strategic partners, of pan-European strategies, and where possible, common policies on preventing and combating transnational organised crime;

- the collection, assessment and exchange of best practices in the prevention of, and fight against, transnational organised crime from all Council of Europe member States;

- the preparation of a White Paper for consideration by the Committee of Ministers, after validation by the CDPC, on selected trends and developments in transnational organised crime in the Council of Europe member States which may be considered as priority areas, focusing on developing an integrated strategic approach to combating transnational organised crime and identifying common responses to major threats to the rule of law and security of citizens.

In discharging its tasks, the PC-GR-COT shall consider the previous and current work carried out in this field by the relevant international and supranational organisations, notably the European Union, and the previous work of the Council of Europe in this area.

Pillar / Sector / Programme

Pillar: Rule of law
Sector: Common standards and policies
Programme: Development and implementation of common standards and policies

Expected results

Expected result: a White Paper is prepared on selected trends and developments in transnational organised crime in the Council of Europe member States which may be considered as priority areas, focusing on identifying possible gaps in the criminal law co-operation and providing recommendations as to possible action by the Council of Europe in this regard.

Composition

Members:

The Ad hoc Drafting Group shall be composed of 12 representatives of member States of the highest possible rank in the field of transnational organised crime, criminal law and criminology, designated by the CDPC, and 1 scientific expert with established expertise in the same field, appointed by the Secretary General.

The composition of the Ad hoc Drafting Group will reflect an equitable geographic distribution amongst the member States and will take account of the gender equality dimension.

The Council of Europe will bear the travel and subsistence expenses of each member.

The scientific expert shall not have the right to vote.

Other member States may designate representatives without defrayal of expenses.

Participants:

Without prejudice to the provisions of Section III.B.a of Resolution CM/Res(2011)24, the following may send representatives, without the right to vote and at the charge of their corresponding administrative budgets:

- Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC);
- Committee of Experts on the Evaluation of Anti-Money Laundering and the Financing of Terrorism (MONEYVAL);
- Conference of the Parties to Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198);
- Group of States against Corruption (GRECO);
- Group of Experts on Action against Trafficking in Human Beings (GRETA);
- Convention Committee on Cybercrime (T-CY) ;
- Council of Europe Committee of Experts on Terrorism (CODEXTER);
- Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group).

The following may send representatives, without the right to vote and without defrayal of expenses:

- European Union;
- States with observer status with the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America);
- United Nations Office for Drugs and Crime (UNODC);
- International Criminal Police Organization (INTERPOL).

Observers:

The following may send representatives, without the right to vote and without defrayal of expenses:

- relevant international organisations;
- representatives of civil society, professional and academic communities.

Working methods

The PC-GR-COT shall report to the Bureau of the CDPC on a regular basis. The Bureau of the CDPC may issue instructions to the PC-GR-COT with regard to its work.

The rules of procedure of the Ad hoc Drafting Group are governed by Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

APPENDIX XX

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 24 September 2012 CDPC (2012) 11
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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

SEA PIRACY

Background working paper

Document prepared by the CDPC Secretariat
Directorate General I – Human Rights and Rule of Law

CDPC website: www.coe.int/cdpc
CDPC e-mail: dgi.cdpc@coe.int

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Introduction

Sea piracy is one of the oldest international crimes[69] and has been an ongoing worldwide problem for several decades. It has become an increasingly danger for any company involved in shipping, making such types of activities potentially very risky indeed.[70]

Piracy rates will continue to grow becoming more and more violent in the world's heavily trafficked waterways as global economies demand high volume shipping. These types of criminal activities have raised the international community's attention as pirates have grown bolder over recent years and have increased their activity as the rewards have become greater. This is an even more pressing issue seeing as often some of the proceeds of piracy are being used to finance terrorism.

Although several military measures have already been put in place to counter piracy, it appears that piracy cannot always be eradicated by navies as the legal parameters for foreign militaries in domestic territorial waters of a sovereign nation are limited.

Curbing maritime piracy can lead to greater economic benefits for the whole world and it is thus essential that states co-operate and establish common ways to fight it.

Following Parliamentary Assembly Recommendation 1913 (2010) (Appendix II) several points regarding piracy and the different measures that need to be taken to tackle these issues were raised. These included:

- Need for a universal and precise definition of piracy;
- Promotion of better co-operation between member states and encouragement of better relations with other countries (mainly members of the United Nations Convention on the Law of the Sea (UNCLOS));
- Prosecution and detention of pirates;
- Protection of witnesses and victims;
- Preventive measures – Taking precautions against piracy;
- Promoting deterrence.

A. Defining Sea Piracy

The lack of a unified internationally recognised definition of sea piracy has led to problems related to qualification, detention and prosecution of sea pirates thus having an impact on the representation of the actual rate of maritime piracy. Therefore, a suitable definition should be found that would cover the multiple situations and multiple areas of the maritime zone. It has often been argued that attempts to tackle piracy through international law are being hampered by the lack of a consistent definition. Many countries therefore support the need for a clear, concise and unified definition that would be agreed upon and respected by most countries.

Countering piracy can take place under international, European and domestic law. The evolution of the number of attacks over the years and the nationality of the attacked ships and of the offenders are described in the first appendix.

1. International scale

[69] Andersen, Brockman-Hawe, & Goff, 2009, p.2

[70] Explanatory, memorandum, by Mrs Keles, Rapporteur at the Parliamentary Assembly- « Piracy- a crime and a challenge for democracies »- 1 April 2010

Several international instruments address the problem of piracy, including the UN Convention on the High Seas (1958), the UN Convention for the suppression of Unlawful Acts against the Safety of the Maritime Navigation (SUA Convention -1988) (Appendix VII), and the UN Convention on the Law of the Sea (UNCLOS, also known as the Montego Bay Convention - 1982) (Appendix VI).

Currently, several countries follow or base their own legal framework (for instance the United Kingdom via the Merchant Shipping and Maritime Security Act71) on UNCLOS, which defines piracy as including:

a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed-
   i) on the high seas, against another ship or aircraft or against persons or property on board such ship…
   ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.

There are however several difficulties with this definition:

- This definition is rather narrow, as it includes only action on the high seas and only action undertaken by one ship against another ship. UNCLOS seeks to distinguish between the high seas and a country's Exclusive Economic Zone (EEZ) and its territorial waters. For the purpose of public international law, and for the purposes of some countries' domestic law, piracy cannot be committed while a vessel is within a country's territorial waters, where the equivalent offence is classed as armed robbery. So forms of violence conducted in the territorial waters as well as without the involvement of two ships, such as, the violent taking control of a ship by members of its crew or passengers, even when the follow-up consists of holding the ship and its crew and passengers to ransom, are not included.
- This definition uses the term "high seas" without properly defining it. It can thus easily be misinterpreted.
- The definition provided by UNCLOS also fails to recognize that acts of violence from maritime marauders may include murder or rape without robbery.

The SUA Convention further expands on the judicial treatment of pirates. Its main purpose is to ensure that appropriate action is taken against persons committing unlawful acts against ships. The SUA Convention calls on Parties to make its enumerated offenses "punishable by appropriate penalties which take into account the grave nature of those offenses".[72]

The IMB (International Maritime Bureau) also offers a definition of piracy that consists in: "the boarding of any vessel with the intent to commit theft or other crime and with the capability to use force in the furtherance of the act"[73]. The IMB's approach of piracy is somewhat broader than the ones mentioned above. The definition is however not flawless. Indeed, its definition fails to distinguish between maritime robbery and piracy since it includes acts of interdiction and robbery that happen at port.

2. National scale

Although many countries are party to the existing mentioned conventions, some have been rather proactive and have established a legal framework at a national level including several strategies in the fight against sea piracy. In a letter dated 23 of March 2012 from the Secretary General to the President of the Security Council, the UN presented a compilation of information received from Member States on measures they have taken to criminalise piracy under their domestic law and to support the prosecution of individuals suspected of piracy off the coast of Somalia and imprisonment of convicted pirates.

[71] Merchant Shipping and Maritime Security Act 1997

[72] Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation: Article 5.

[73] International Chamber of Commerce, 2004, p.3

Denmark

Denmark has taken several initiatives to criminalise piracy under domestic law and to support the prosecution of individuals suspected of piracy and imprisonment of convicted pirates. Under section 183A (rev 1992) of the Danish Criminal Code, it is a punishable offence under section 260 to take control of or interfere with the manoeuvring of a ship by unlawful means.

Danish naval vessels have guidelines on how to handle cases that may result in the prosecution of pirates in Denmark. These guidelines contain specific directives on the collection of evidence and communication between authorities in order to ensure the suitable execution of a political criminal case dealing with piracy.

Denmark also has legislation regarding the prosecution and detention of pirates. It has also been very active in co-operating with other states and welcoming bilateral agreements in order to fight against sea piracy.

France

France has recently implemented Act No. 2011-13 of 5 January 2011 concerning measures against piracy and the exercise of national police powers at sea. The act amends the act of 15 July 1994 concerning modalities for the exercise of national police powers at sea, which already provides for means of action by the state against crimes committed at sea, such as illicit trafficking and illegal immigration. The new legislation adds a new chapter to that act, specifically addressing maritime piracy by referring to a number of offences relating to piracy that were already included in the Criminal Code but that have now been brought together in one instrument.

French courts, which had previously been competent only when the victim was a French national, now have quasi-universal jurisdiction under the new act. The French authorities can still decide whether or not to hold the trial in France, in accordance with Article 105 of the United Nations Convention on the Law of the Sea, which gives the courts of the State that captured the suspected pirates the option of prosecuting them but does not impose an obligation. The original legal framework has now been complemented with a specific procedure for the detention of persons suspected of crimes at sea, such as piracy and illicit trafficking. These persons are detained on the warships that captured them, but at that stage are still not subject to judicial proceedings in the strict sense.

Any French judicial proceedings begin only once the detainees have set foot on French soil and are brought before a French judge. Under the new procedure, the custodial judge takes action within 48 hours of the suspects' capture in order to confirm or modify the detention measures taken on the warship pending a decision on what is to be done with the suspects. The judge then monitors the conditions of detention until the suspects disembark. This feature is the salient point of the procedure established by the new act. This act will improve the legal framework for action to combat piracy at sea, particularly off the coast of Somalia. It specifies the conditions under which French forces may take action to counter the threat, as well as the modalities for prosecution by French judges. The act incorporates the principles set forth in the United Nations Convention on the Law of the Sea. By adopting this act, France is complying with the requests of various United Nations organs, in particular the Security Council, which have called on Member States to ensure that their legal framework facilitates effective action against piracy.

Russia

In Russia, piracy is defined under Article 227 of the Criminal Code as an assault against a maritime or other vessel with intent to capture the property of others and with the use of force or the threat of force. It is punishable by imprisonment from 5 to 15 years.

3. Summary

What possible future CDPC's work could focus on (in terms of a definition of piracy):

* A universal definition of piracy;

* Clarification of the meaning of the term “High Seas”;
* Clarification of the distinction robbery/piracy;
* Finding an acceptable middle ground between a broad and a narrow definition;
* The treatment of acts that do not fall under piracy;
* Emphasis on co-operation between states.

B. Prosecution

Certain issues related to prosecuting individuals linked to activities related to sea piracy:

- States are often reluctant to prosecute. It is not easy to identify pirates and it is particularly difficult to prove that the acts were committed ;
- Jurisdiction/ Legal issues;
- Nowadays, pirates rarely end up in court: in most cases, even when they could be apprehended, they are left free.

1. Evidence: Proving Piracy

One of the main problems in prosecuting pirates is the lack of sufficient evidence. If a pirate is caught in the act of capturing a ship, this is an easy case to prosecute. However, other attempt situations may raise difficult questions regarding finding evidence of activities related to piracy especially if different countries have agreed upon different definitions and legislations. Some acts may thus not fall under a so-called act of piracy that needs to be criminalised whereas some may. For example, a local vessel may engage in multiple activities such as piracy, fishing and smuggling and when the ships are apprehended, the crewmen on board claim that they are not pirates. One must then decide whether there is sufficient evidence to take these individuals into custody.

It has been suggested that there should be a new definition of the crime which is comparable to the crime of possession of burglary tools. In the case of piracy, one could criminalize the possession of a rocket-propelled grenade (“RPG”) in a vessel. In other words, one could make it a crime to possess the characteristic tools of piracy. This would help to close the obvious gap: when one cannot prove piracy, one may be able to prove possession of piracy tools. Even so, some weapons may be seen as more characteristic for self-defence while at sea, and thus some evident problems would remain.

Since the implementation of the EU anti-piracy operation Atalanta, the number of attacks has not decreased but the number of successful attacks has been reduced. During the first semester of 2011, one in 14 attacks were successful whereas in 2010 one in four attacks were successful.[74] However, on the other hand, the amount of ransom demanded by the pirates has increased. In 2008, the average ransom was between $500 000-2 million and in 2009 this figure appears to have increased. [75]

2. Criminal procedure : Detention and Trial

Piracy is defined by every nation as a crime. When an act is defined as a crime, a trial will be held to determine whether the individual apprehended for such an act is guilty as a matter of both fact and law.

A complication arises over the legal status of pirates once they are captured by foreign naval forces in their own territorial waters. Under French law, for instance, a captain may apprehend and hold pirates but only a judicial authority can arrest and detain them for trial. In many cases, the pirates are not brought onto warships but are left in their own vessels without being allowed to depart. Some countries which are parties to the UN

[74] « Piraterie maritime : autant d’attaques mais moins de réussite pour les pirates », Laure Constantinesco, 27/06/2012, TV5 Monde

[75] United Nations Office on Drugs and Crime Report, Chapter 9 Maritime Piracy, page 199

conventions have a more limited capacity to combat piracy lawfully given the restraints of their own domestic laws.

What sentences are given to the pirates?

As we have previously mentioned, there is no universal legislation regarding piracy and the sentence concerning the pirates depends on the applicable law.

Here we can examine 2 examples regarding French ships which were attacked.

- The Carré d'As case: the Carré d'As was attacked by Somali sailors who kidnapped a French couple. The pirates were condemned to 4-8 years in prison. [76]

- The Ponant case: The Ponant was attacked by the "Somali Marines", one of the most powerful groups of pirates. They kidnapped 30 crew members. The hostages were released after the payment of a ransom and 6 pirates were captured. Following the trial, where 3 of the pirates continuously protested their innocence, 2 were acquitted, while the others received sentences ranging from 4 to 10 years.

3. <u>Co-operation between states</u>

The challenge of locating and sustaining jurisdictions willing and able to prosecute piracy suspects and detain private convicts persists. To date, some of the legal and law enforcement challenges have been addressed through the establishment of bilateral agreements. Some agreements define procedures for the detention, transfer and prosecution of captured pirate suspects.

The benefits of European and international co-operation are becoming visible in some parts of the world, with for instance a sustained reduction of attacks in the Strait of Malacca, and with increasing evidence of the willingness of naval forces to intervene when piracy occurs.

As another example, the EU anti-piracy operation Atalanta was launched to counter sea piracy. This project unites multiple states in the fight against maritime piracy. It was established in accordance with the EU Council Joint Action 2008/851 and EU Council Decision 2008/918, on 8 December 2008. The operation was in support of Resolutions 1814, 1816 and 1838 which were adopted in 2008 by the United Nations Security Council (UNSC). This operation has now been extended until December 2014. The operation has several goals including: the prevention and repression of acts of piracy and robbery off the Somali coast, the protection of vulnerable shipping and the monitoring of fishing activities off the coast of Somalia. [77]

The European Union has also been fighting sea piracy in several other ways.

For instance, the *Critical Maritime Routes Programme*, which was set up in 2009, has focussed on the security and safety of essential maritime routes in areas affected by piracy to help to secure shipping and trading lines of communication. Its long term goal is to improve maritime governance.

The European Development Fund set up the *Regional Maritime Security Programme* (MASE) in 2010, which aims to develop legal and infrastructural capabilities for arrest, transfer, detention and prosecution of pirates. It hopes to strengthen the regional capacity to mitigate financial flows and minimise the economic impact of piracy.[78]

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[76] France Info, mercredi 30 novembre 2011, par Mikaël Roparz.

[77] European Union Naval Force Somalia – Operation Atlanta.

[78] Piracy, the curse of maritime transport, European Commissions' role in managing financial development instruments

The *EUCAP NESTOR CSDP mission* is intended to support the maritime capacities within the framework of the Common Security and Defence Policy. This new mission, beginning in summer 2012, will have two main aims: firstly, to reinforce the maritime capacities of Djibouti, Kenya, Tanzania, and the Seychelles and secondly to reinforce the state's rule of law in the Somali regions of Puntland and Somaliland.

4. What are pirates' rights?

As mentioned in Doc. 12193 on Piracy – a crime and a challenge for democracies (April 2010) of the Parliamentary Assembly, a legitimate issue arises concerning what rights should be granted to the suspected pirates while they are kept in custody and on what legal basis they should be held. Should the suspected pirates have access to legal assistance, to an interpreter, to the asylum procedure?

The nature of the pirates' right to trial and procedural as well as legal due process rights varies from nation to nation. In some legal systems the pirates' right to trial is a mere formality. However, in other nations such as the United Kingdom a piracy trial gives the accused substantial due process rights.

C. Protection of victims and witnesses

In recent years, the lack of protection of victims and witnesses of sea piracy has come to the fore. The availability of witnesses for trial is a necessity but also a problem especially in legal systems where an affidavit is not sufficient proof at trial. Many witnesses and victims have proven to be reluctant in reporting crimes or participating in the prosecution of pirates for fear of retaliation. Providing some forms of protection to vulnerable people is thus an important step in countering piracy.

D. Preventive Measures

Measures such as those highlighted by the International Ship and Port Facility Security (ISPS) Code involving the use of satellite tracking systems (ShipLoc) combined with a better watch keeping, a naval presence able and prepared to undertake rapid pursuit supported by intelligence gathering procedures, can minimise the effect of attacks by pirates. Also, an important area where improvements can be made is in the way in which the Ships Security Alert Systems (SSAS) operate. Typically, these send a warning message to the Flag State and to the owners' office. A study carried out by the S. Rajaratnam School of International Studies at Singapore's Nanyang Technical University, concluded that an efficient system would entail more detailed warning messages being sent, and that these should go directly to coastal states and also to naval vessels in regional security operations, and to local and international co-ordinators. A further recommendation was for a code to be injected into a vessel's Automatic Identification Systems (AIS) messages, to alert nearby coastal states and vessels, particularly naval forces. Meanwhile, ship owners can also be proactive by maintaining a robust attitude towards security simply by taking precautions such as we have outlined, by co-operating with organisations and especially by promptly reporting any incidents.

However, preventive measures at sea, although necessary, are the last line of defence. It is doubtful that terrorism and piracy at sea will ever be fully eradicated, but real and sustained progress towards that objective needs even greater co-operation between nations, the full commitment of ship owners, and concentrated action in the countries from which piracy occurs.

Conferences and discussions should, in this respect, be encouraged. The aim of the latter is to build awareness of the prevailing threat from sea piracy, promote further co-operation including in the crucial area of extending more support to seafarers and their families who become victims of privacy and support capacity development among regional states especially Somalia to present viable national responses to threats of off-shore piracy.

APPENDIX XXI

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

QUESTIONNAIRE ON ISSUES OF COMBATING MARITIME PIRACY

Questionnaire prepared by the Russian Federation

CDPC website: www.coe.int/cdpc
CDPC e-mail: dgi.cdpc@coe.int

QUESTIONNAIRE
ON ISSUES OF COMBATING MARITIME PIRACY
WITHIN THE EUROPEAN COMMITTEE ON CRIME PROBLEMS

1) Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?

2) To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?

3) What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?

4) As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?

5) As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?

6) Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?

7) What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?

8) Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?

9) How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?

10) How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?

11) How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?

12) Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?

13) Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?

14) Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?

15) Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?

16) What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?

17) Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?

APPENDIX XXII

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

Replies to the questionnaire on issues of combating maritime piracy

Reponses au questionnaire sur les enjeux de la lutte contre la piraterie maritime

Document (CDPC (2012)15)

Document prepared by the CDPC Secretariat
Directorate General I – Human Rights and Rule of Law

Document établi par le Secrétariat du CDPC
Direction Générale I - Droits de l'homme et Etat de droit

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AZERBAIJAN / AZERBAÏDJAN

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

International legal frameworks existing today on combating maritime piracy such as UNCLOS 1982 (art. 100 to 107 and 110), Suppression of Unlawful Acts Convention, Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the active piracy area of Western Indian Ocean and the Gulf of Aden and other IMO *legal instruments are the basic legal tools to be adopted by the States in terms of combating piracy.*

However, existing international legal framework cannot be considered as completely sufficient.

The practice shows that some difficulties arise during criminal prosecution of persons committing crimes of piracy armed robbery at sea and other related offences. Therefore, it is necessary to improve existing international legal framework.

The other problem is the lack of coordination of international efforts for harmonization of international legal measures to combat and punish the crimes committed by pirates therefore the need of supplementing or improving current international legal framework should be considered periodically or upon the event occurs while the States or related organizations come up with new ideas or proposals in order to build the piracy policy efficiently.

Urgency of the problem of piracy has been repeatedly voiced by the UN Security Council, in which the cases were considered piracy and adopted resolutions (No 1816, 1846, 1851, and etc.) calling on the international community and international and regional organizations to enhance the fight against piracy and the expansion of the complex measures for the prosecution of perpetrations of pirate attacks.

Regarding questions 2 and 3

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

The Republic of Azerbaijan became a full-fledged member to the UN International Maritime Organization in 1995.

The Republic of Azerbaijan is a party to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and of International Convention for the Safety of Life at Sea (SOLAS-74),

Legal norms which prescribe piracy and robbery at sea have been indicated in the Criminal Code of the Republic of Azerbaijan.

In accordance with the amendments adopted on 2 July 2001, maritime piracy or sea robbery is an attack on sea and river vessels with the purpose of capturing another person's property by use of violence or a threat to use violence (art. 219-1.1.). Article 219-1 of the Criminal Code provides for 5 to 8 years of imprisonment for the offence of robbery at sea. The Article further provides for 8 to 12 years of imprisonment if the offence was committed by a group of persons or with use of weapons or objects that can be used as weapons. The Article provides for 12 to 15 years of imprisonment if the offence was committed repeatedly or by an organized criminal group or if it caused accidental death of a person or other serious consequences.

Article 11 of the Criminal Code stipulates that crimes committed within the sea boundaries of the Republic of Azerbaijan, in the part of Caspian Sea (lake) belonging to the Republic of Azerbaijan and in the economic zone of the Republic of Azerbaijan shall be considered crimes committed within the territory of the Republic of Azerbaijan.

The person, who has committed a crime on a water vessel registered in a port of the Republic of Azerbaijan, flying the flag or identification sign of the Azerbaijan Republic and sailing the high seas shall be subject to criminal liability under the Criminal Code of the Republic of Azerbaijan (Article 11.3 of the Criminal Code).

The nationals of the Republic of Azerbaijan, foreigners and stateless persons who have committed particular crimes, including sea robbery, shall be subject to criminal liability and punishment under the Criminal Code of the Republic of Azerbaijan, irrespective of the place the offence was committed *(if these persons were apprehended on the territory of the Republic of Azerbaijan and if they are not subject to liability on the territory of the foreign state for the abovementioned offence).* (Article 12.3 of the Criminal Code).

Persons suspected of committing an offence of sea robbery are entitled to benefit from all procedural guarantees set forth in Code of Criminal Procedure of the Republic of Azerbaijan. Moreover, from the moment of his/her detention a suspect has the right to know the reasons for his/her detention, to receive legal assistance of a lawyer of his choosing, to meet with the lawyer in private without any limitations as to duration of meetings, to use legal advice of the lawyer free of charge, to give testimony in his/her mother tongue or in

any other language that he/she speaks, to benefit from the assistance of a translator free of charge and some other rights as established in Article 90 of the Code of Criminal Procedure.

Concerning the piracy suspects as described in the questionnaire, Article 86 of the Code of Criminal Procedure sets forth the powers of a captain of a vessel or a military vessel as regards imprisonment, interrogation, detention and handover to appropriate justice authority of a person suspected of sea piracy. At the same time, according to Article 214.2.2 of the Code, investigation of criminal cases concerning crimes committed on board of sea vessels shall be conducted by captains of sea vessels or by other persons authorized for that.

No separate proceedings have been set in national legislation concerning the detention of suspect in piracy or sea robbery on the dock of the vessel until his/her handover to appropriate justice authority or any other entity to conduct a criminal prosecution. However, according to Article 148.4 of the Code of Criminal Procedure, a person can be detained before a criminal case is instituted. If no decision to institute the criminal case is taken within 24 hours of the person being detained, the person shall be released immediately. Even if this decision is taken, the detention of the person may not exceed 48 hours. The detained person shall be charged within 48 hours of being taken into custody and shall be brought before a court; the court shall examine the case without delay and decide between arrest as a restrictive measure and release.

Military vessels of the Republic of Azerbaijan do not escort trade ships or carry out patrol operations in the high seas where a threat of piracy exists, and there are no separate provisions in the national legislation concerning participation of an investigator, prosecutor or a judge on the dock of the vessel over the cases mentioned above.

Azerbaijan is not a party to any international covenant (rules) providing for handover of piracy suspects to littoral states with the purpose to conduct a criminal prosecution of them thereafter.

On the basis of the Law of the Republic of Azerbaijan dated 29 May 2012, the amendments were made to the Merchant Shipping Code of the Republic of Azerbaijan to ensure maritime safety and maintain disciplines in harbors by establishing competences of relevant executive authorities.

By the amendment to Article 63.1 of this Code, the implementation of the supervision of relevant executive power was established to ensure existence and compatibility of shipping documents with major vessel indicators, the due arrangement of ship crew and compliance to international requirements in the field of trade shipping.

By the Decree of the President of the Republic of Azerbaijan State Maritime Administration was established on 6 February 2006.

In compliance with the requirements of International Convention for the Protection of Life at Sea (SOLAS-74), to which the Republic of Azerbaijan is a party, the National Centre for Identifying from a Remote Distance and Tracing at the State Maritime Administration has been established. The functions of the National Centre include tracing the positions of vessels sailing within the sea boundaries of the Republic of Azerbaijan by satellite and radars, transferring appropriate information to vessels regarding navigation warnings and weather forecasts, implementing the supervision of compliance to the Rules of sailing within the sea boundaries of the Republic of Azerbaijan, ensuring the submission of SOS signals of vessels and other information obtained to concerning state authorities and its arranging their coordination, as well as establishing regular operative relations and exchanging of information with other countries' National Centers with the same functions and shipping companies including appropriate international organizations.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

There have been no cases regarding capturing of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of the public of the Republic of Azerbaijan.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

There have been no cases when persons suspected of piracy were released.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

No such operations were conducted, either crew members which are Azerbaijani citizens were never undergone piracy act or armed robbery.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

In accordance with article 56 of the Merchant Shipping Code of the Republic of Azerbaijan and article 56 of the Regulation on Service of Transport Fleet Vessels of the Republic of Azerbaijan, the master of the vessel has the rights to detain person who is suspected of a crime and act of armed robbery and he shall deliver suspected person to the relevant State Body.

In case of a crime conducted on board of the ship, the captain, in accordance with the criminal-procedural legislation of the Azerbaijan Republic has the duties of an investigation authority (*see reply to the questions 2 and 3*).

According to Article 3.2 of the Code of Criminal Procedure of the Republic of Azerbaijan, the provisions of criminal procedural legislation of the Republic of Azerbaijan also apply outside its territory to sea or river vessels that are flying the flag of the Republic of Azerbaijan, carrying its identification signs, or registered in its ports.

In accordance with Article 214 of the Code of Criminal Procedure, preliminary investigation of criminal cases related to crimes committed in the territory on which sea vessels are located is carried out by the vessel captain. A preliminary investigation is carried out in the form of investigative procedures which cannot be delayed in criminal cases subject to mandatory investigation.

While investigating the preliminary investigator is authorized to initiate a criminal case, detain the suspected person, interrogate him/her, and conduct such investigatory actions as search operations, search of persons (body search), and seizure.

The matters regarding detention, as one of the restrictive measures, are regulated by the Chapter 16 of the Code of Criminal Procedure.

Upon being satisfied that the circumstances so warrant, the captain of the vessel, in accordance with its law, take the offender into custody or take other measures to ensure that offender will not be able to avoid all appropriate criminal or extradition proceedings.

8) Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?

Any persons arrested on suspicion of piracy or robbery at sea shall be entitled to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence, he will be visited by a representative of that State.

According to the Code of Criminal Procedure, suspects and accused persons enjoy the rights enshrined in Article 90.7 and Article 91.5.

Under the article 91.5 of Code of Criminal Procedure, any persons arrested on suspicion of piracy at sea, have the following rights: to have an advocate since being arrested or charged, and use his/her assistance free of charge, to choose or dismiss his/her own advocate, to use assistance of interpreter free of charge, to confess his guiltiness or innocence, to give explanations in his/her native language or in other language, to have his/her objection or petition and etc.

Regarding questions 9 and 10

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

As it was mentioned above the captain of the vessel has the rights to detain person who is suspected of a crime and act of armed robbery and he shall deliver suspected person to the relevant State Body. Duration of custody standards have not been defined by law of Azerbaijan Republic but at the same time it should be mentioned that in the case of such events happen articles 8 and 10 of the SUA Convention will be applied.

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

There are no any requirements in the legislation of the Republic of Azerbaijan for participation of investigators, prosecutors and judges on board military vessels of the Republic of Azerbaijan escorting commercial vessels and patrolling piracy-prone areas of high seas.

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

The Republic of Azerbaijan has not signed any international agreements in regard to this matter.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

The Republic of Azerbaijan is not a party to any international agreements on governing the transfer of persons suspected of piracy.

Other international agreements are used as guidance on transfer of persons suspected of piracy and sea robbery to another party for the purpose of conducting a criminal prosecution. In case of absence of such agreements the Law on Extradition is applied.

In accordance with Article 7 of that Law, in urgent cases necessary measures as shown in criminal procedural legislation are taken for the purpose of searching and arresting the person before the actual receipt of request for transfer based on petition by the foreign state.

The arrested person shall be released if the requesting foreign state fails to send a request for transfer or documents specified by this Law 18 days after the receipt of an official notification regarding the arrest of the person. In case of a good reason, based on request by the petitioning foreign state the above mentioned time-period can be prolonged to no longer than 30 days after the receipt of official notification regarding the arrest of the person.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

There have not been any cases of transfer of persons suspected in sea robbery.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

There is no use of private military and security companies services at the vessels that flies the flag of Azerbaijan Republic.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

The relations that arise during the implementation of private security activities in the Republic of Azerbaijan, its legal grounds, principles and duties, as well as the mutual relationships between private security activity subjects and state bodies are regulated by the Law on “Non-state (private) security activities”.

According to Article 7 of that Law this activity is carried out on the basis of a special permit (license).

According to Article 17 of that Law the special permits (licenses) are issued under this Law as well as other legislative acts by the Ministry of National Security to foreign legal entities that operate on the territory of Azerbaijan or to foreign legal entities established by foreigners or persons without citizenship, including those established by foreign funds, and by the Ministry of Internal Affairs to other legal entities.

Providing private security services without a special permit (license) is punishable under the legislation of the Republic of Azerbaijan.

According to Article 13 of the Law, guards are allowed to use physical force or special means provided by the private security institution or the security unit of a legal entity only within the confines of the protected objects in cases specified by this Law and other legislative acts of the Republic of Azerbaijan. In accordance with the requirements of this Law the use of physical force or special means shall be proportionate to the risen danger.

According to Article 20 of the Law, the supervision over private security activities and circulation of special means in the frame of such activities is undertaken by the Ministry of National Security or the Ministry of Internal Affairs in accordance with procedure and conditions specified in the legislation.

The rights and duties of guards, restrictions in regards to them, conditions and limits for using physical force or special means when carrying out private security functions are also regulated by this Law.

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

Not any such cases took place.

BELGIUM / BELGIQUE

1) *Le cadre juridique international qui existe actuellement peut-il être considéré comme suffisant pour lutter efficacement contre la piraterie maritime et les autres actes illégaux commis en mer, y compris le vol à main armée ? Faudrait-il l'améliorer (le moderniser) ou le compléter à cet égard ?*

Les dispositions juridiques actuelles sont suffisantes.

2) Jusqu'à quel point la législation de votre pays est-elle adaptée pour engager des poursuites judiciaires contre les personnes soupçonnées d'actes de piraterie et de vol commis en mer ?

Les personnes auteur d'actes de piraterie ou à l'égard de laquelle il existe des indices sérieux de culpabilité relatifs à une telle infraction peuvent être arrêtées :

- par les navires de guerre belges et les équipes de protection militaire belge embarqués sur des navires civiles ;
- par le capitaine d'un navire belge marchand ou de pêché maritime :
  - (i) qui peut agir, à l'égard d'un bateau battant pavillon belge, en qualité de juge d'instruction et de magistrat disciplinaire : il procède à une instruction sommaire et entend les témoins, il dresse un procès-verbal qui fait foi jusqu'à preuve du contraire si l'infraction de piraterie maritime est commis contre son navire ;
  - (ii) qui, en cas de flagrant délit, dresse un procès-verbal et informe sur le champ le procureur fédéral de la privation de liberté. Le procureur doit confirmer dans les 24 heures la privation de liberté et s'il décide de poursuivre l'inculpé, il doit requérir le juge d'instruction qui discernera ou pas un mandat d'arrêt provisoire valable au maximum un mois. Les poursuites pourront s'exercer en Belgique et dans ce cas, l'inculpé sera transféré en Belgique. Si le juge d'instruction estime que la détention doit être maintenue, il ordonne une détention préventive.

3) *Quelles sont les mesures prévues dans votre législation nationale pour criminaliser les actes de piraterie et le vol commis en mer ? Comment la piraterie est-elle définie dans la législation de votre pays ?*

Les articles 3 et 4 de la loi du 30 décembre 2009 relative à la lutte contre la piraterie maritime sont ainsi rédigés :

Art. 3.

§ 1er. Constitue une infraction de piraterie l'un des actes suivants :

a) tout acte illicite de violence, de menace, de détention ou de déprédation commis par l'équipage ou les passagers d'un navire privé agissant à des fins privées et dirigé : i) contre un autre navire, ou contre des personnes ou des biens à leur bord, en haute mer; ii) contre un autre navire, des personnes ou des biens à leur bord, dans un lieu ne relevant de la juridiction d'aucun Etat;

b) tout acte de participation volontaire à l'utilisation d'un navire, lorsque son auteur a connaissance de faits dont il découle que ce navire est un navire pirate;

c) toute tentative, tout acte préparatoire, ou tout acte ayant pour but d'inciter à commettre les actes définis aux a) ou b), ou commis dans l'intention de les faciliter.

§ 2. Les actes de piraterie, tels qu'ils sont définis au paragraphe 1er, perpétrés par un navire de guerre ou un navire d'Etat dont l'équipage mutiné s'est rendu maître sont assimilés à des actes commis par un navire privé.

§ 3. Les actes visés aux paragraphes 1ers et 2, commis dans un espace maritime autre que la haute mer, sont assimilés à des actes de piraterie tels que définis aux paragraphes 1ers et 2, dans la mesure prévue par le droit international.

Art. 4.

§ 1er. Toute personne qui aura commis une infraction de piraterie visée à l'article 3, § 1er, a) ou b) sera punie de la réclusion de dix ans à quinze ans.
Toute personne qui aura commis une infraction de piraterie visée à l'article 3, § 1er, c) sera punie de la réclusion de cinq ans à dix ans.

§ 2. Toute personne qui participe à une activité d'un groupe de pirates, y compris par la fourniture d'informations ou de moyens matériels au groupe de pirates, ou par toute forme de financement d'une activité du groupe de pirates, en ayant connaissance que cette participation contribue à commettre une infraction de piraterie, sera punie de la réclusion de cinq ans à dix ans.
Tout dirigeant du groupe de pirates sera puni de la réclusion de quinze ans à vingt ans.

§ 3. Les infractions visées au paragraphe premier, seront punies de la réclusion de quinze ans à vingt ans si la violence, la menace, la détention ou la déprédation ont causé soit une maladie paraissant incurable, soit une incapacité permanente physique ou psychique, soit la perte complète de l'usage d'un organe, soit une mutilation grave.
La même peine sera appliquée si le pirate a soumis les personnes se trouvant à bord à des actes visés à l'article 417ter, alinéa premier, du Code pénal.
Les infractions visées au paragraphe premier, seront punies de la réclusion de vingt ans à trente ans si la violence, la menace, la détention ou la déprédation, exercée sans intention de donner la mort, l'ont pourtant causée.
Les infractions visées au paragraphe premier, seront punies de la réclusion à perpétuité si un meurtre ou un assassinat a été commis.
Les infractions visées au paragraphe premier, seront punies de la réclusion de quinze ans à vingt ans si une atteinte grave a été portée à la sécurité de la navigation ou à la protection de l'environnement.

§ 4. A l'exception des peines prévues par le paragraphe 1er, alinéa 2, et le paragraphe 2, les peines seront appliquées, lors même que la consommation du crime aura été empêchée par des circonstances indépendantes de la volonté des auteurs.

4) *En ce qui concerne votre Etat, y a-t-il eu des cas où des personnes soupçonnées d'actes de piraterie en haute mer ont été capturées par un navire de guerre ou un navire civil battant pavillon de votre*

pays ? Si oui, quelles mesures ont été prises pour détenir et/ou poursuivre ou punir par la suite ces personnes ?

La Belgique a connu un cas (au large du Kenya, dans le cadre de l'Opération ATALANTA) dans lequel six personnes soupçonnées d'actes de piraterie en haute mer ont été capturées par un navire de guerre battant pavillon belge. Considérant que les critères d'opportunité n'étaient pas réunis en l'espèce le Procureur fédéral (exclusivement compétent dans cette matière au regard de la loi belge) a décidé de ne pas poursuivre les suspects en Belgique. Dès lors, les autorités militaires belges qui détenaient les personnes suspectes de piraterie ont agi conformément aux règles imposées par ATALANTA. Le manque de solutions à ce niveau a rapidement eu comme conséquence que le Commandant de la frégate belge s'est tourné vers les autorités judiciaires kenyanes pour les inviter à se saisir de 5 des 6 pirates arrêtés, ce que le Kenya a refusé de faire. Exposons, pour être complet, que le 6ème suspect avait entre-temps été reconnu formellement comme ayant été le co-auteur d'un acte de piraterie précédent commis sur un navire battant pavillon belge, ce qui a eu pour conséquence que ce suspect-là à bien été ramené et poursuivi en Belgique.

5) *En ce qui concerne votre Etat, y a-t-il eu des cas où des personnes soupçonnées d'actes de piraterie ont été remises en liberté ? Si oui, quelle en a été la raison ?*

Ce fut le cas pour 5 des 6 personnes suspectées d'acte de piraterie dont question à la question précédente. Après l'échec des négociations avec les autorités judiciaires kenyanes, le manque de solutions a obligé le Commandant de la frégate belge de remettre en liberté les 5 suspects en les déposant sur une plage près de Mogadiscio.

6) *Votre Etat a-t-il jamais mené des opérations pour libérer un navire capturé battant pavillon national, des membres d'équipage faisant partie de ses ressortissants (ou des citoyens étrangers) ou, au moyen de ses forces navales, contribué à libérer des navires battant pavillon d'autres pays mais dont l'équipage comprenait certains de ses ressortissants ? Les actions menées par les représentants de votre Etat pour libérer les navires ou les membres d'équipage ont-elles eu des conséquences juridiques ?*

La Belgique a, à plusieurs reprises, participé à l'Opération ATALANTA mise sur pied par l'Union européenne. Durant ces campagnes de sécurisation du trafic maritime au large de la Somalie, la frégate belge présente sur place n'a jamais eu, sensu stricto, à participer à des actions de type militaire à l'encontre de pirates impliqués dans les actions énumérées à la question. Par contre, dans le cas de la prise d'otage de l'équipage du navire « Pompéi » battant pavillon belge, les autorités belges ont mené des négociations avec les pirates afin de libérer le navire et les membres de son équipage contre le paiement d'une rançon. Une procédure judiciaire a ensuite été introduite en Belgique, laquelle a donné lieu, jusqu'à présent, à l'arrestation, au rapatriement et au jugement de deux suspects. Le premier a été condamné à une peine d'emprisonnement de 10 ans pour des

faits de piraterie, le dossier du second est actuellement pris en délibéré par le tribunal correctionnel de Brugge (jugement prononcé le 12 novembre 2012). Il n'est pas impossible que dans un avenir proche d'autres personnes soient poursuivies également pour le fait de piraterie commis contre le navire belge « Pompéi ».

7) *Quel est le fondement juridique des droits et obligations et de l'autorité procédurale d'un capitaine de navire ou d'un commandant de navire militaire en matière d'arrestation, d'interrogatoire, de détention et de transfert éventuel de personnes soupçonnées d'actes de piraterie aux fins de l'administration de la justice ?*

- Loi du 30 décembre 2009 relative à la lutte contre la piraterie maritime ;
- loi relative à la lutte contre la piraterie maritime et modifiant le Code judiciaire ;
- loi du 5 juin 1928 portant révision du Code disciplinaire et pénal pour la marine marchande et la pêche maritime.

8) *Dans la législation de votre pays, quels droits sont reconnus aux personnes arrêtées qui sont soupçonnées d'actes de piraterie ou de vol commis en mer (droits de la défense, droit à un interprète, etc.) lorsqu'elles font l'objet d'une procédure judiciaire à bord d'un navire ?*

Droit commun adapté. Ainsi la loi relative à la lutte contre la piraterie maritime prévoit par exemple que :

- la privation de liberté qui ne peut en aucun cas dépasser vingt-quatre heures doit être confirmée dans les vingt-quatre heures par le procureur fédéral. A défaut, l'intéressé est remis en liberté. La décision du procureur fédéral est immédiatement communiquée à l'intéressé par le commandant ;
- l'audition de la personne privée de liberté peut se faire par des moyens radio, téléphoniques, audio-visuels ou d'autres moyens techniques qui permettent une transmission directe de la voix entre le juge d'instruction et le suspect tout en garantissant la confidentialité de leurs échanges. Si l'audition de la personne privée de liberté est impossible en raison de circonstances exceptionnelles, le juge d'instruction doit alors auditionner les personnes qui sont en mesure d'exposer les charges pesant contre cette personne ;
- l'intéressé est immédiatement informé de la décision du juge d'instruction par le commandant et une copie du mandat d'arrêt provisoire lui est délivrée dès que possible. Le commandant consigne dans un procès-verbal l'heure précise à laquelle l'intéressé a été informé de la décision du juge d'instruction ainsi que l'heure précise à laquelle la copie du mandat d'arrêt provisoire lui a été délivrée.

9) *Comment la législation de votre pays régit-elle l'ordonnance et la durée de détention d'une personne soupçonnée d'actes de piraterie ou de vol commis en mer à bord d'un navire et durant son transfert aux fins de l'administration de la justice ou vers une autre partie pour des poursuites pénales ?*

Voir question 10.

10) *Comment votre Etat veille-t-il à ce que les normes légales relatives à la durée maximale de détention concernant ces personnes soient respectées en cas de transfert aux fins de l'administration de la justice depuis des zones éloignées en haute mer ?*

Notre législation stipule que :

- La privation de liberté ne peut en aucun cas dépasser vingt-quatre heures. La privation de liberté doit être confirmée dans les vingt-quatre heures par le procureur fédéral. A défaut, l'intéressé est remis en liberté;
- Si le procureur fédéral estime qu'une personne privée de liberté pour des actes de piraterie devrait être placée sous mandat d'arrêt, il requiert le juge d'instruction qui peut décerner un mandat d'arrêt provisoire. Le mandat d'arrêt provisoire doit être décerné dans les vingt-quatre heures de la privation de liberté initiale et est valable jusqu'à vingt-quatre heures qui suivent l'arrivée du détenu sur le territoire du Royaume et au maximum un mois ;
- dans l'hypothèse où les poursuites sont exercées en Belgique, l'inculpé sera transféré en Belgique aussi rapidement que les circonstances le permettent. Dans les vingt-quatre heures de son arrivée sur le territoire du Royaume, il sera présenté physiquement au juge d'instruction et interrogé. Le juge d'instruction vérifie si les délais de vingt-quatre heures qui suivent l'arrivée du détenu sur le territoire du Royaume et d'un mois maximum ont été respectés. A défaut d'audition dans les vingt-quatre heures ou en cas de non-respect des délais, l'inculpé est remis en liberté.

11) *Comment votre Etat veille-t-il à la participation des enquêteurs, des procureurs et des juges à bord des navires militaires battant pavillon national qui escortent les navires commerciaux et patrouillent dans les zones de haute mer exposées à la piraterie ?*

Outre ses compétences exclusives en matière de piraterie maritime, le parquet fédéral est également compétent pour les infractions commises par les militaires à l'étranger. Dans ce cadre, à l'instar d'autres contacts team organisés là où l'armée belge se déplace, il a été convenu qu'un magistrat fédéral puisse être à bord de la frégate belge lorsque celle-ci participe à l'opération ATALANTA. C'est ainsi qu'en 2010, un magistrat fédéral a participé à bord à une partie de la mission ATALANTA et qu'il est prévu cette année de réitérer l'expérience. Dans les deux cas, il était accompagné d'un enquêteur. Le but de la présence à bord

d'un magistrat fédéral et du policier spécialisé en milieu militaire est surtout de veiller à l'application stricte des lois en vigueur lorsque des personnes suspectées de piraterie sont arrêtées, de faciliter la coopération internationale et de veiller à l'accomplissement des formalités légales dans les meilleures conditions. Les juges d'instruction ne sont, quant à eux, pas à bord mais peuvent, si nécessaire, communiquer avec le Commandant et les détenus via vidéo-conférence.

12) *Votre Etat a-t-il signé des accords (dispositifs) internationaux régissant la participation ou l'aide de membres de forces de l'ordre étrangères aux enquêtes sur des bateaux arrêtés par l'un de ses navires militaires au cours d'une opération visant à sauver ces derniers des pirates ?*

Non.

13) *Votre Etat est-il partie à des accords (dispositifs) internationaux régissant le transfert de personnes soupçonnées d'actes de piraterie vers des Etats côtiers en vue d'engager des poursuites pénales à leur encontre ?*

Non.

14) *Y a-t-il eu des cas de transfert où le pays de destination a dû renvoyer les personnes soupçonnées d'actes de piraterie vers le pays ayant procédé au transfert, faute de preuves concernant l'infraction ou l'acte de piraterie ? Dans de tels cas, quelles mesures ont été prises par le pays ayant procédé au transfert ?*

La Belgique n'a jamais été confrontée au cas où le transfert des personnes soupçonnées vers la Belgique n'avait pas donné lieu à des poursuites en Belgique.

15) *Les navires commerciaux battant pavillon de votre pays ont-ils recours aux services d'entreprises militaires et de sécurité privée (EMSP) qui proposent d'escorter les navires dans les zones des routes commerciales internationales exposées à la piraterie ?*

Il n' y a jusqu'à ce jour pas de législation spécifique concernant les des entreprises de sécurité à bord de navires battant le pavillon belge En absence d'une telle réglementation spécifique, l'administration de l'inspection des navires battant le pavillon belge est d'avis que le droit criminel, y inclus les dispositions interdisant l'emploi des entreprises de sécurité non autorisés, et le port d'armes non autorisé, sont d'application aux navires battant pavillon belge. Le Conseil des Ministres à approuvé le 11 octobre 2012 un projet de loi visant à permettre les activités de surveillance, protection et sécurisation contre la piraterie

maritime de manière armée à bord de navires battant le pavillon belge par des entreprises de sécurité maritimes autorisées à cet effet par l'autorité belge, dans des zones à haut risque de piraterie définies.

16) *Quelles dispositions législatives s'appliquent aux activités des EMSP qui ne relèvent pas de la compétence de votre Etat, notamment sur les aspects tels que l'octroi de licences et le contrôle des activités des EMSP, l'utilisation d'armes et l'entrée dans les ports de pays étrangers avec des gardes et des armes à bord ?*

L'octroi de licences et le contrôle des activités des entreprises, ainsi que l'utilisation des armes à bord de navires battant pavillon belge tombent sous la juridiction belge et le projet de loi susmentionné en règle les modalités. Cependant, un navire étranger naviguant dans la mer territoriale d'un autre Etat que l'Etat du pavillon du navire, ou faisant escale dans un de ses ports peut pour certains aspects être assujetti à la double juridiction de l'Etat du pavillon et de l'Etat Côtier. Le projet de loi susmentionné prévoit notamment l'obligation pour l'entreprise de sécurité maritime de démontrer que les armes dont ses agents seront équipés sur place, dans l'exercice des activités de surveillance et de protection à bord de navires pour lutter contre la piraterie, sont conservées et montées à bord dans les ports concernés, conformément à la législation en vigueur étrangère.

17) *Votre pays a-t-il rencontré des problèmes juridiques ou administratifs pour garantir l'accès de ses navires dans les ports de pays étrangers avec des gardes armés à bord ? Si oui, comment (par quels moyens) les a-t-il résolus ?*

Voir question 16 et 17.

CYPRUS / CHYPRE

1) *Can the International legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

At present the international legal framework although gives the grounds for a State to protect its citizens and their property from Piracy, in real terms it is proven to be ineffective. The protection of vessels passing from areas where acts of Piracy have been witnessed is not an easy task from the coastal state especially where such areas have political and social instability. Vessels passing from such waters are vulnerable to such acts as they have no means of being self protected. At present the issue of vessels being capable of self protection depends solely on the flag state legislation. The international legal framework should be supplemented so as to enforce measures through the IMO to improve protection and combat Piracy in international waters.

2) *At what extent is the legislation of your state adapted to prosecute persons suspected of piracy and robbery at sea?*

Article 69 of the Criminal Code, CAP 154, establishes as criminal offence the acts of piracy. The Criminal Code, according to article 5, applies, inter alia, to acts of piracy committed in a foreign state by any person and also to Cyprus and foreign flag vessels.
Furthermore, *The Protection of Cyprus Ships Against Acts of Piracy and Other Unlawful Acts Law of 2012 (Law 77(I)/2012"*also criminalizes piracy and gives the right to the Master of the vessel and members of the crew to arrest and detain persons who committed, or attempted to commit illegal acts on board a vessel, including the act of Piracy in international waters. Law 77(I)/2012 also gives the right to the Master of the ship to detain the equipment used for the illegal act including but not limited to arms and guns.

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your state?*

Law 77(I)/2012 and the Criminal Code establish piracy as a criminal offence. Robbery at sea is included in the definition of "piracy" as shown below, art. 2.L.77 (I)/2012:
"piracy" means:
(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends
by the crew or the passengers of a private ship, and directed:
(i) on the high seas, against another ship, or against persons or property on board such ship;

(ii) against a ship, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship with knowledge of facts making it a pirate ship; and

(C) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b) above;

4) *As far as your state is concerned; have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your state? If so what measures were taken to detain and/or subsequently prosecute or punish them?*

N/A

5) *As far as your state is concerned have there been cases when persons suspected of piracy were released? If so what was the reason for that*

N/A

6) *Has your state ever conducted operations to release a capture vessel flying the flag of your State, members of a crew were citizens of your of your State (or foreign citizens), or using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among the crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

The Cyprus Port and Marine Police Unit, Cyprus Police Headquarters, was not involved so far in a case of piracy and freeing a vessel and/or her crew as no such case ever happened in the area.

7) *What is the legal foundation of the rights and obligations and procedural authority of a vessel captain or commanding officers of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

Law 77(I)/2012 provides for the powers and obligations of vessel captains and/or commanding officers (military Vessels) in relation to the arrest / detention and transfer of persons and the search/ detention of property.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc) under your States law when they undergo legal proceedings on board a vessel?*

Article 7 (2) of Law 77(I)/2012 provides that every arrest, search, detention, seizure, impoundment, or custody made by the master and/or crew of the ship pursuant to the provisions of subsection (1) of Article 7 of Law 77(I)/2012 constitutes arrest, search, detention, seizure, impoundment, or custody made within the meaning of the provisions of the Criminal Procedure Code, Cap.155 and Laws of 1972 to Law No. 2 of 2012, which apply proportionally.

Moreover, Law 163(I)/2005 provides for the rights of arrested and detained persons.

9) *How does your States law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution*

The Criminal Procedure Code, in particular article 24, as mentioned above applies proportionally. Relevant provisions also exist in article 11 of the Cyprus Constitution.

10) *How does your state ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

Articles 8, 9 and 10 of the Law 77(I)/2012 provide that the Master of the ship is obliged to inform the flag state about the arrest of a person, the conditions of his/her custody. The national authorities have the right to give guidelines to the Master of the ship on the conditions of the custody which should be met based on national legislation and the Master of the Ship is obliged to follow the guidelines given by the National Authorities.

11) *How does your state ensure the application of investigators, prosecutors and judges on board of military vessels of your state escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

N/A

12) *Has your state signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigation or provisions of assistance in the*

investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?

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13) *Is your State a party to any international agreements (arrangements governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

The Republic of Cyprus is a State Party to the following relevant International Conventions which provide for the duty between State Parties to cooperate:
UNCLOS (1982) – United Nations Convention for the Law of the Sea ratified by Law 203/88.
UN Convention for the Suppression of Unlawful Act against the Safety of Maritime Navigation, Ratified by Law 17(III)/1999
UN Convention on Transnational Organized Crime Ratified by Law 11(III)/2003

The Republic of Cyprus has also signed 31 bilateral agreements and/or Memorandum of Understandings with other Countries on police cooperation matters.

14*) Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

N/A

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone arts of international trade routes?*

Article 12 of the Law 77 (I)/2012 provides that the vessels under Cyprus flag have the right to employ private security companies on board vessels under certain criteria and after the relevant licenses have been issued. It is expected that certain merchant vessels flying the Cyprus flag will make use of this provision of the Law.

16) What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your state, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board.

If a PMSC is providing services on Cyprus flag vessel, then it is subject to the jurisdiction of Cyprus legislation.

For PMSC vetted to provide services on board Cyprus flag ships, there is a process of submitting an application which is reviewed as per the provisions of the Law 77(I)/2012, and if the review indicates compliance to the provisions of the Law then the company is allowed to render such services. Those provisions include the approval of the use of weapons when the ship is at High Seas or within territorial/internal waters of another state, subject to the consent of that state. Also include provisions about the inspection/audit/investigation of the activities of a PMSC when the Competent Authority considers necessary.

For the entry of ships carrying on board guards or arms the PMSC is responsible to obtain and submit to the Competent Authority all required licenses when there will be a transfer/loading/unloading/storage etc of arms within the territory of another state.

17*) Has your state had any legal or administrative problems in ensuring access of vessels flying the flag of yours State with armed guards on board to the ports of foreign State? If so how (through what channels) were they addressed?*

N/A

FINLAND / FINLANDE

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

The current legal framework set out in the 1982 United Nations Convention on the Law of the Sea (UNCLOS) that also reflects customary international law can be considered sufficient. This framework is supported by other instruments including the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and other directive mechanisms such as best practices established by the International Maritime Organization (IMO). The legal framework is also complemented by UN Security Council resolutions, especially as regards Somalia. States are also bound by international human rights and other international and national obligations.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

And

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

Piracy is understood in this connection as defined in Article 101 of the United Nations Convention of the Law of the Sea, including the requirement that the act is committed in the high seas or in a place outside the jurisdiction of any State.

According to Finnish Penal Code and Decree issued on the basis of Section 7 of Chapter 1 of the Penal Code, piracy is defined as follows: *"Homicide, assault, deprivation of liberty or robbery directed at a person on board a vessel or aircraft, or seizure, theft or damage of a vessel, aircraft or property on board a vessel or aircraft that is to be deemed piracy as referred to in the United Nations Convention on the Law of the Seas (Treaties of Finland 50/1996),(118/1999)".*

Chapter 1 of the Finnish Penal Code contains extensive rules on extraterritorial jurisdiction. According to its provisions Finnish law applies to an offence connected with a Finnish vessel (section 2). Finnish law applies also to an offence committed outside of Finland and directed at a Finnish citizen, a Finnish corporation, foundation or other legal entity, or a foreigner permanently resident in Finland (section 5). Furthermore, Finnish law applies to an offence committed by a Finnish citizen. The so called active nationality principle is not limited to Finnish citizens, but covers also persons permanently resident in Finland, citizens of other Nordic

States or persons permanently resident in one of those countries (section 6). When applying the above mentioned provisions on active and passive nationality, it is required that the act may be punishable by imprisonment of more than six months.

In accordance with Penal Code Chapter 1 Section 7 Finnish law applies also to an offence committed outside of Finland where the punishability of the act, regardless of the law of the place of commission, is based on an international agreement binding on Finland or on another statute or regulation internationally binding on Finland (international offence). A decree issued by virtue of this provision refers to the United Nations Convention of the Law of the Sea.

As a main rule, a criminal case where the offence was committed abroad may not be investigated in Finland without a prosecution order by the Prosecutor-General. There are certain exceptions to this rule, for instance in situations where the offence has been committed by a Finnish citizen or directed against Finland (section 12 of Chapter 1 of the Penal Code).

Finland participated with a vessel to the EUNAVFOR Atalanta, the European Union military crisis operation against piracy off the coast of Somalia in the beginning of 2011 (and continues to send officials to the Operational Headquarters of EUNAVFOR Atalanta). For the purposes of Finland's participation to the Atalanta operation an Act on the Handling of Criminal Matters concerning Persons Suspected of Piracy or Armed Robbery in connection with EUNAVFOR Atalanta, the European Union Military Crisis Management Operation (1034/2010) was adopted. The act applies to the procedure to be followed in situations where during the operation a person apprehended as suspected of piracy or armed robbery is kept on board a vessel under Finnish flag, or in other cases where Finland is inquired whether it will exercise criminal jurisdiction in the matter.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

And

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

Finnish Mine Layer FNS Pohjanmaa captured and detained 18 suspected pirates in April 2011 while participating in operation Atalanta. The EUNAVFOR Atalanta had to release the suspects, as no state was willing to accept the transfer of the suspects and to exercise jurisdiction. In accordance with the Act on the Handling of Criminal Matters in connection with operation Atalanta (1034/2010), the Central Criminal Police of

Finland decided that in the absence of a link required by the act, Finland could not initiate criminal investigations and try the suspects in Finland.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

No.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

Public Order Act 612/2003: Pursuant to section 2, a vessel is a public place with the exception of cabins. Section 22 of the Act contains provisions on appointing a security steward and section 23 on the duties of a security steward.

The Security Stewards Act (533/1999) is applied also on board vessels. Section 7 of the Act contains provisions on the removal, apprehension and custody of individuals. Pursuant to subsection 4 of the said section, anyone apprehended under the Act on board a vessel may (however) be kept in custody on the orders of the vessel's captain until the vessel is next in port, unless the reason for the apprehension has ceased to be valid prior to that. Pursuant to subsection 6 of the same section, the security steward may place a person taken into custody only in such a space administered by the security steward that the police department of the competent population register district has before the opening of the event inspected and approved. The security steward must draw up a notice of taking into custody of each person held in custody and sign it. The security steward must submit the notice to the police department of the population register district without delay after the end of the event. (29.9.2006/847)

Provisions on maintaining law and order are laid down in Chapter 13, section 18 of the Seafarers' Employment Contracts Act (756/2011). Under the said section, the shipmaster and persons assisting the shipmaster are entitled to use such forcible measures on board that are necessary for maintaining law and order and that can be considered defendable taking into account the dangerousness of the resistance and the situation otherwise. Provisions on the exaggeration of the use of forcible measures are laid down in Chapter 4, sections 6(3) and 7 of the Criminal Code of Finland (39/1889). Furthermore, a shipmaster transporting passengers in accordance with Chapter 15 of the Maritime Act may appoint security stewards to maintain law and order and

to monitor safety on board the ship and in its immediate vicinity. Provisions on the qualification requirements, training, powers and duties of such security stewards are laid down in the Security Stewards Act (533/1999).

According to the Government Proposal 90/2005, further provisions on the contents of a notice of taking into custody shall be issued by a decree of the Ministry of the Interior, as provided in section 13 of the Security Stewards Act. The notice of taking into custody may, among other things, contain information on the reason for the apprehension, time for holding the person in custody, frisk search carried out at the time of taking the person into custody, and objects and substances taken away in the frisk.

As regards operation Atalanta, the powers of the EU Operation Commander have been defined in the Council Joint Action 2008/851/CFSP.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

Finland is bound to international obligations concerning procedural and other fundamental rights and such obligations are as law in force in Finland. Unless authorised by an international instrument and enabled by law, Finnish authorities are not entitled to carry out legal proceedings outside Finland.
Where criminal proceedings take place within the territory of Finland, the Criminal Investigations Act applies. The person has i.e. the right to a lawyer and under certain conditions the right to a public defender, as well as the right to interpretation.

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

As stated above, unless agreed in an international instrument (such as e.g. operation Atalanta) and enabled by law, Finnish authorities do not have powers to arrest anyone, nor any other powers to use coercive measures or other investigative or procedural measure outside the territory of Finland

During operation Atalanta, when Finland has decided to initiate investigations, the Criminal Investigations Act along with other relevant national legislation applies. If possible, the trial on detention can be held on board via video link when the court has decided to do so in compliance with the Finnish Coercive Measures Act (450/1987) Chapter 1 Section 15 Subsection 2.

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

The suspects should be transferred from such remote areas for the administration of justice within the time limits stipulated by the law, when the aforementioned video link cannot be utilised. In some specific circumstances bringing the detained person promptly before a judge can be materially impossible, and this has been acknowledged even by the European Court of Human Rights (*Medvedyev and Other – France*, No 3394/03).
As stated above, Finnish authorities do not have criminal investigative powers outside the territory of Finland (including powers to arrest anyone / take somebody into custody), unless such powers are authorised by law. As stated above, specific legislation was enacted for the operation Atalanta, when Finland participated in that operation.

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

As stipulated in the Act on the Defence Forces (551/2007) and the Act on Military Crisis Management (211/2006) Finnish military vessels could escort commercial vessels only while participating in a crisis management operation, i.e. operation Atalanta.
The forces serving in operation Atalanta have been assigned to perform initial investigations and to collect evidence when capturing suspects, after which the State that exercises jurisdiction will be responsible for the actual preliminary investigations.

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

No.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

The EU has negotiated transfer agreements that are set to guarantee respect for international law, notably international human rights law, so that no one shall be subjected to the death penalty, to torture or to any cruel, inhuman or degrading treatment or punishment, and so that the prohibition of arbitrary detention and the requirement of a fair trial will be respected. A State also needs the permission of EUNAVFOR to transfer a

suspect to a third country. The EU has made transfer agreements with Kenya, Seychelles and Mauritius. Although the agreement with Kenya is no longer in force, Kenya continues to apply it on a case-by-case basis. The EU is currently negotiating with Tanzania, and has made overtures to Uganda, South-Africa and Mozambique.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

No.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

And

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

In principle, Finnish law is to be applied for all operations practiced on board of vessels flying the Finnish flag. So, when it comes to the activities of PMSC, Finnish Private Security Services Act and Firearms Act are to be applied. For example, the private security operators have to be licensed according to Private Security Services Act.

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

No.

FRANCE

1) *Le cadre juridique international qui existe actuellement peut-il être considéré comme suffisant pour lutter efficacement contre la piraterie maritime et les autres actes illégaux commis en mer, y compris le vol à main armée ? Faudrait-il l'améliorer (le moderniser) ou le compléter à cet égard ?*

Les conventions internationales qui permettent de lutter contre les actes illicites en mer sont les suivantes :

- **La convention des Nations Unies sur le droit de la mer** adoptée à Montego Bay le 10 décembre 1982

- **La convention des Nations Unies contre le trafic illicite de stupéfiants** et de substances psychotropes adoptée à VIENNE le 20 décembre 1988,

Ces conventions fournissent un cadre juridique international satisfaisant pour permettre à ce jour une lutte efficace contre la piraterie maritime et les autres actes illégaux en mer. Lorsque des Etats souhaitent approfondir leur coopération dans certaines zones ou dans certains domaines, le renforcement de leur coopération reste possible.

La France a ainsi signé l'accord de San José du 10 avril 2003 concernant la coopération en vue de la répression du trafic illicite maritime et aérien de stupéfiants et de substances psychotropes dans la région des Caraïbes.

2) *Jusqu'à quel point la législation de votre pays est-elle adaptée pour engager des poursuites judiciaires contre les personnes soupçonnées d'actes de piraterie et de vol commis en mer ?*

La législation française apparaît à ce jour tout à fait adaptée pour engager des poursuites judiciaires contre les personnes soupçonnées d'actes de piraterie. Depuis la loi du 5 janvier 2011, les juridictions pénales françaises sont compétentes pour juge des actes de piraterie ayant lieu en haute mer dans différentes hypothèses :

- Quand l'auteur des faits est français : dans tous les cas s'il s'agit d'un crime, et, en cas de délit, si les faits sont punis par la législation du pays où ils ont été commis (il faut également dans ce dernier cas, une plainte de la victime ou une dénonciation officielle des faits par le pays dans lequel les faits ont eu lieu) ;

- Lorsque la victime est française (il faut là encore une plainte de la victime ou une dénonciation officielle des faits par le pays dans lequel les faits ont eu lieu) ;

- Lorsque l'auteur est étranger mais se réfugie ensuite sur le territoire français et que la France refuse (pour certaines conditions limitativement énumérées) son extradition.

- En l'absence des critères précédents, quand les pirates ont été appréhendés par des agents français spécifiquement énumérés par la loi (Officiers de police judiciaire, commandants des bâtiments d'l'Etat, officiers de la marine nationale embarqués, commandants des aéronefs de l'Etat) et ce en l'absence de toute souveraineté étrangère revendiquée, et à défaut d'entente avec les autorités d'un autre Etat susceptible de retenir sa compétence juridictionnelle. *(Critère créé par la loi du 5 janvier 2011)*

3) *Quelles sont les mesures prévues dans votre législation nationale pour criminaliser les actes de piraterie et le vol commis en mer ? Comment la piraterie est-elle définie dans la législation de votre pays ?*

Il n'existe pas d'infraction de piraterie en droit français. En revanche, plusieurs infractions permettent de couvrir les comportements considérés comme des actes de piraterie au sens de la Convention de Montego Bay :

- Le **détournement de navire** (ou d'aéronef)
- **L'enlèvement** ou la **séquestration**
- La **participation à une association de malfaiteurs** lorsqu'elle est commise en vue de préparer les infractions de détournement de navire (ou d'aéronef), ou de séquestration liée à un détournement de navire ;

4) *En ce qui concerne votre Etat, y a-t-il eu des cas où des personnes soupçonnées d'actes de piraterie en haute mer ont été capturées par un navire de guerre ou un navire civil battant pavillon de votre pays ? Si oui, quelles mesures ont été prises pour détenir et/ou poursuivre ou punir par la suite ces personnes ?*

Oui. Dans 4 cas sur 5, des procédures judiciaires ont été ouvertes en France. Les personnes soupçonnées ont été ramenées sur le territoire national français et des mesures de détention provisoire ont été prises.

Un de ces affaires a donné lieu à un jugement définitif. Les autres sont en cours d'enquête ou de jugement.

5) *En ce qui concerne votre Etat, y a-t-il eu des cas où des personnes soupçonnées d'actes de piraterie ont été remises en liberté ? Si oui, quelle en a été la raison ?*

Oui une fois à notre connaissance car aucun Etat susceptible d'être compétent n'a voulu ouvrir de procédure juridictionnelle.

6) *Votre Etat a-t-il jamais mené des opérations pour libérer un navire capturé battant pavillon national, des membres d'équipage faisant partie de ses ressortissants (ou des citoyens étrangers) ou, au moyen de ses forces navales, contribué à libérer des navires battant pavillon d'autres pays mais dont l'équipage comprenait certains de ses ressortissants ? Les actions menées par les représentants de votre Etat pour libérer les navires ou les membres d'équipage ont-elles eu des conséquences juridiques ?*

Oui quatre fois. Nous ne pouvons apporter de précision sur le deuxième point s'agissant d'éléments couverts par le secret des enquêtes, toujours en cours à ce jour.

7) *Quel est le fondement juridique des droits et obligations et de l'autorité procédurale d'un capitaine de navire ou d'un commandant de navire militaire en matière d'arrestation, d'interrogatoire, de détention et de transfert éventuel de personnes soupçonnées d'actes de piraterie aux fins de l'administration de la justice ?*

Ce sont des dispositions légales qui figurent dans le code de la défense (article L1521-1 et suivants) et la loi du 15 juillet 1994 qui régissent les pouvoirs d'un commandant de bâtiment de l'Etat.

Lien vers la loi du 15 juillet 1994 :

http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000713756&categorieLien=id

Lien vers le code de la défense :

http://legifrance.gouv.fr/telecharger_pdf.do?cidTexte=LEGITEXT000006071307

8) *Dans la législation de votre pays, quels droits sont reconnus aux personnes arrêtées qui sont soupçonnées d'actes de piraterie ou de vol commis en mer (droits de la défense, droit à un interprète, etc.) lorsqu'elles font l'objet d'une procédure judiciaire à bord d'un navire ?*

Selon le droit français, la phase de privation de liberté à bord des navires est indépendante de la procédure judiciaire. C'est une phase administrative qui est régie par des dispositions spécifiques. La phase judiciaire ne commence que s'il est décidé que des poursuites seront exercées à l'encontre des pirates (ce qui suppose qu'un critère de compétence existe) et qu'après que les pirates soupçonnés aient été ramenés sur le territoire national.

Néanmoins, durant la phase de privation de liberté à bord des navires, la personne privée de liberté a le droit à un examen de santé. Un juge vérifie les conditions de cette privation de liberté et peut s'entretenir avec les personnes concernées. Si nécessaire, un interprète intervient pour les entretiens et pour la notification de la décision du juge (cf. 9).

9) *Comment la législation de votre pays régit-elle l'ordonnance et la durée de détention d'une personne soupçonnée d'actes de piraterie ou de vol commis en mer à bord d'un navire et durant son transfert aux fins de l'administration de la justice ou vers une autre partie pour des poursuites pénales ?*

Quand un commandant de navire retient à son bord des personnes soupçonnées de piraterie, il en avertit immédiatement le Procureur de la République qui doit saisir un juge (le juge des libertés et de la détention) dans un délai de 48 heures à compter du début de la privation de liberté. Ce juge statue sur la prolongation éventuelle de la privation de liberté. Il dispose pour cela de toutes les informations utiles à sa mission (à savoir les informations initiales et le compte-rendu de l'examen de santé de la personne privée de liberté). Le juge peut également s'entretenir avec cette personne (avec l'aide d'un interprète si nécessaire).
Le juge, par une ordonnance insusceptible de recours, prolonge la mesure privative de liberté pour une durée de 120 heures maximum. Cette décision est ensuite renouvelable dans les mêmes conditions de fond et de forme durant tout le temps nécessaire pour que les personnes appréhendées soient remises à l'autorité compétente, que celle-ci soit française ou étrangère.

10) *Comment votre Etat veille-t-il à ce que les normes légales relatives à la durée maximale de détention concernant ces personnes soient respectées en cas de transfert aux fins de l'administration de la justice depuis des zones éloignées en haute mer ?*

Cf. réponse au point 9.

11) *Comment votre Etat veille-t-il à la participation des enquêteurs, des procureurs et des juges à bord des navires militaires battant pavillon national qui escortent les navires commerciaux et patrouillent dans les zones de haute mer exposées à la piraterie ?*

Ceci n'est pas prévu par la loi.

12) *Votre Etat a-t-il signé des accords (dispositifs) internationaux régissant la participation ou l'aide de membres de forces de l'ordre étrangères aux enquêtes sur des bateaux arrêtés par l'un de ses navires militaires au cours d'une opération visant à sauver ces derniers des pirates ?*

Non, il n'a pas été signé d'accords spécifiques en ce sens.

13) *Votre Etat est-il partie à des accords (dispositifs) internationaux régissant le transfert de personnes soupçonnées d'actes de piraterie vers des Etats côtiers en vue d'engager des poursuites pénales à leur encontre ?*

La France n'a pas signé de tels accords. En revanche, l'Union européenne a conclu des accords de ce type avec Les Seychelles et l'Ile Maurice.

14) *Y a-t-il eu des cas de transfert où le pays de destination a dû renvoyer les personnes soupçonnées d'actes de piraterie vers le pays ayant procédé au transfert, faute de preuves concernant l'infraction ou l'acte de piraterie ? Dans de tels cas, quelles mesures ont été prises par le pays ayant procédé au transfert ?*

Non.

15) *Les navires commerciaux battant pavillon de votre pays ont-ils recours aux services d'entreprises militaires et de sécurité privées (EMSP) qui proposent d'escorter les navires dans les zones des routes commerciales internationales exposées à la piraterie ?*

A ce jour, aucune disposition légale ne prévoit que des gardes armés peuvent se trouver à bord des navires battant pavillon français. Le recours à de telles entreprises est illégal à plusieurs titres et en particulier parce qu'en France le port d'armes est strictement interdit, sauf autorisation légale spécifique.

16) *Quelles dispositions législatives s'appliquent aux activités des EMSP qui ne relèvent pas de la compétence de votre Etat, notamment sur les aspects tels que l'octroi de licences et le contrôle des activités des EMSP, l'utilisation d'armes et l'entrée dans les ports de pays étrangers avec des gardes et des armes à bord ?*

Il n'existe aucune disposition sur ce point.

17) *Votre pays a-t-il rencontré des problèmes juridiques ou administratifs pour garantir l'accès de ses navires dans les ports de pays étrangers avec des gardes armés à bord ? Si oui, comment (par quels moyens) les a-t-il résolus ?*

Sans objet.

GEORGIA / GEORGIE

1) *Le cadre juridique international qui existe actuellement peut-il être considéré comme suffisant pour lutter efficacement contre la piraterie maritime et les autres actes illégaux commis en mer, y compris le vol à main armée ? Faudrait-il l'améliorer (le moderniser) ou le compléter à cet égard ?*

Réponse : ----------

2) *Jusqu'à quel point la législation de votre pays est-elle adaptée pour engager des poursuites judiciaires contre les personnes soupçonnées d'actes de piraterie et de vol commis en mer ?*

Réponse : Le Code Pénal de la Géorgie donne la définition de la piraterie maritime et de la compétence de la Géorgie sur des actes criminels commis sur un navire battant pavillon de la Géorgie ou commis contre ce navire. En outre, la compétence géorgienne sur la piraterie maritime et de vol commis en mer découle des obligations internationales prises par la partie géorgienne en signant à cet effet des instruments juridiques contraignant.

3) *Quelles sont les mesures prévues dans votre législation nationale pour criminaliser les actes de piraterie et le vol commis en mer ? Comment la piraterie est-elle définie dans la législation de votre pays ?*

Réponse : La définition de la piraterie est donnée à l'article 228 du Code Pénal de la Géorgie.

«Article 228. Piraterie

1. Piraterie, c'est-à-dire un acte d'agression, commis contre un navire de mer ou autre moyen de transport navigable, avec l'emploie de la force ou la menace de son emploie, dans le but de prise de possession de bien d'autrui ou de son appropriation illégale, est punie de sept à dix ans de privation de liberté.

2. Même fait :

a) commis plus d'une fois ;

b) ayant entraîné le décès d'une personne ou autre conséquence grave, sont punis de dix à quinze ans de privation de liberté.»

4) *En ce qui concerne votre Etat, y a-t-il eu des cas où des personnes soupçonnées d'actes de piraterie en haute mer ont été capturées par un navire de guerre ou un navire civil battant pavillon de votre pays ? Si oui, quelles mesures ont été prises pour détenir et/ou poursuivre ou punir par la suite ces personnes ?*

Réponse : Non

5) *En ce qui concerne votre Etat, y a-t-il eu des cas où des personnes soupçonnées d'actes de piraterie ont été remises en liberté ? Si oui, quelle en a été la raison ?*

Réponse : Non

6) *Votre Etat a-t-il jamais mené des opérations pour libérer un navire capturé battant pavillon national, des membres d'équipage faisant partie de ses ressortissants (ou des citoyens étrangers) ou, au moyen de ses forces navales, contribué à libérer des navires battant pavillon d'autres pays mais dont l'équipage comprenait certains de ses ressortissants ? Les actions menées par les représentants de votre Etat pour libérer les navires ou les membres d'équipage ont-elles eu des conséquences juridiques ?*

Réponse : Non

7) *Quel est le fondement juridique des droits et obligations et de l'autorité procédurale d'un capitaine de navire ou d'un commandant de navire militaire en matière d'arrestation, d'interrogatoire, de détention et de transfert éventuel de personnes soupçonnées d'actes de piraterie aux fins de l'administration de la justice ?*

Réponse : Le code maritime de la Géorgie en son article 60 définie l'autorité procédurale d'un capitaine de navire en plein navigation. Notamment, lors de la perpétration d'un acte criminel prévu et réprimé par la législation pénale géorgienne, le capitaine de navire assure les fonctions de l'autorité d'enquête. A cet effet, il se fond sur le Code de procédure pénale de la Géorgie et sur l'instruction relative à l'exécution des actes procéduraux sur un navire maritime étant en navigation.

8) *Dans la législation de votre pays, quels droits sont reconnus aux personnes arrêtées qui sont soupçonnées d'actes de piraterie ou de vol commis en mer (droits de la défense, droit à un interprète, etc.) lorsqu'elles font l'objet d'une procédure judiciaire à bord d'un navire ?*

Réponse : Dans ce cas, la personne arrêtée possède tous les droits garantis aux personnes arrêtées qui sont sujettes d'une procédure judiciaire ordinaire. Quoique, le fait de ne pas pouvoir faire valoir de ses droits en raison des causes objectives, ne peut pas être considéré comme une entrave à une bonne administration de la justice.

9) *Comment la législation de votre pays régit-elle l'ordonnance et la durée de détention d'une personne soupçonnée d'actes de piraterie ou de vol commis en mer à bord d'un navire et durant son transfert aux fins de l'administration de la justice ou vers une autre partie pour des poursuites pénales ?*

Réponse : Conformément au Code maritime de la Géorgie, le capitaine peut prendre une décision d'arrêter une personne se trouvant à bord d'un navire et soupçonnée de la perpétration de fait prévu et réprimé par la législation pénale géorgienne. Le capitaine a une obligation de transmettre cette personne dans le premier port de l'Etat aux organes judiciaires compétents. Dans le cas de la nécessité le capitaine a le droit d'envoyer en Géorgie cette personne et les matériaux correspondants, avec un autre navire enregistré en Géorgie. Ces clauses ne sont pas applicables lorsqu'il s'agit d'accomplissement des obligations découlant des instruments juridiques internationaux contraignant.

10) *Comment votre Etat veille-t-il à ce que les normes légales relatives à la durée maximale de détention concernant ces personnes soient respectées en cas de transfert aux fins de l'administration de la justice depuis des zones éloignées en haute mer ?*

Réponse : ----------

11) *Comment votre Etat veille-t-il à la participation des enquêteurs, des procureurs et des juges à bord des navires militaires battant pavillon national qui escortent les navires commerciaux et patrouillent dans les zones de haute mer exposées à la piraterie ?*

Réponse : ----------

12) *Votre Etat a-t-il signé des accords (dispositifs) internationaux régissant la participation ou l'aide de membres de forces de l'ordre étrangères aux enquêtes sur des bateaux arrêtés par l'un de ses navires militaires au cours d'une opération visant à sauver ces derniers des pirates ?*

Réponse : La Géorgie n'a pas signé des accords internationaux régissant spécialement ce sujet.

13) *Votre Etat est-il partie à des accords (dispositifs) internationaux régissant le transfert de personnes soupçonnées d'actes de piraterie vers des Etats côtiers en vue d'engager des poursuites pénales à leur encontre ?*

Réponse : La Géorgie n'a pas signé des accords internationaux régissant spécialement ce sujet.

14) *Y a-t-il eu des cas de transfert où le pays de destination a dû renvoyer les personnes soupçonnées d'actes de piraterie vers le pays ayant procédé au transfert, faute de preuves concernant l'infraction ou l'acte de piraterie ? Dans de tels cas, quelles mesures ont été prises par le pays ayant procédé au transfert ?*

Réponse : Non

15) *Les navires commerciaux battant pavillon de votre pays ont-ils recours aux services d'entreprises militaires et de sécurité privées (EMSP) qui proposent d'escorter les navires dans les zones des routes commerciales internationales exposées à la piraterie ?*

Réponse : ----------

16) *Quelles dispositions législatives s'appliquent aux activités des EMSP qui ne relèvent pas de la compétence de votre Etat, notamment sur les aspects tels que l'octroi de licences et le contrôle des activités des EMSP, l'utilisation d'armes et l'entrée dans les ports de pays étrangers avec des gardes et des armes à bord ?*

Réponse : ----------

17) *Votre pays a-t-il rencontré des problèmes juridiques ou administratifs pour garantir l'accès de ses navires dans les ports de pays étrangers avec des gardes armés à bord ? Si oui, comment (par quels moyens) les a-t-il résolus ?*

Réponse : ----------

GERMANY / ALLEMAGNE

General remarks

The questionnaire aims at compiling information on national approaches to combating piracy. The questions cover a very broad range of topics starting with existing national criminal law, practical experiences, Criminal Procedure Law, trials and enforcement of sentences in third states and ending with armed guards on civil vessels. It might be interesting to evaluate all those topics but I'm afraid it will be difficult to obtain sufficient in-depth answers at such short notice.

When piracy was first discussed at the CoE 2010 and the Parliamentary Assembly asked to tackle some issues, most of the member states did not have much experience and there had not been other fora which allow sharing best practices and developing standards in this field. The situation had changed since then.

Therefore I would recommend that we try to identify specific topics which are not discussed elsewhere and where the input of the Council of Europe would be welcome. That might not cover all issues mentioned by the Parliamentary Assembly. Nevertheless that could provide a more useful result.

Questionnaire

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

Answer to questions 1 – 3

Section 316c of the German Criminal Code (assaults against air and maritime transport) is the main criminal provision relevant to the fight against piracy. Pursuant to this section, any person who uses force or attacks the freedom of decision of a person or engages in other conduct in order to gain control of, or influence the navigation of, an aircraft employed in civil air traffic which is in flight or a ship employed in civil maritime traffic incurs criminal liability. Furthermore, any person who uses firearms or undertakes to cause an explosion or a fire, in order to destroy or damage such an aircraft or ship or any cargo on board, also incurs criminal liability

under this provision. The offence is punishable by a prison sentence of not less than five (and up to fifteen) years. An aircraft which has already been boarded by members of the crew or passengers or the loading of the cargo of which has already begun or which has not yet been deboarded by members of the crew or passengers or the unloading of the cargo of which has not been completed shall be equivalent to an aircraft in flight. The punishment is imprisonment for life or for not less than ten (and up to fifteen) years if by the act the perpetrator at least recklessly causes the death another person. Criminal liability is also incurred by a person who, in preparation of such an offence, produces, procures for himself or another, stores or supplies to another firearms, explosives or other materials designed to cause an explosion or a fire. This offence is punished with a prison term of between six months and five years.

This provision, as well as the other general criminal provisions that may be applicable, provide for the criminal prosecution of the offence of piracy as defined in section 316 c of the German Criminal Code. There is thus no need for legislative action.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

Answer

Yes, there have been such cases. As German warships operate under ATALANTA command the decision on follow up measures have not been taken by German authorities. German public prosecutors started in general more than 200 investigative procedures in piracy cases but in none of the cases involving a German warship persons have been transferred to Germany.
10 pirates have just been sentenced in Germany to imprisonment. They have been captured by a Dutch warship and extradited to Germany.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

Answer

Some persons have been released. They have to be released if there is not enough evidence to prove that they committed a crime.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

Answer

German warships operate under the ATALANTA command. There were no cases in which the German State conducted such operations.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

Answer

As soon as an investigation is started against a person he has the same rights as any suspect in German criminal proceedings. He is informed about his rights. He is not obliged to cooperate with any investigator. He has the right to contact a lawyer. He has the right to get sufficient translations. Still, it is difficult to exercise such rights on board of a vessel or after an arrest in a foreign country. Modern communication facilities have to be used.

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

Answer

No. The only agreement with respect to specific investigations is the agreement on establishing a Joint Investigation Team with the Netherlands – but that agreement was signed by a public prosecutor and not by Germany.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

Answer

No persons have been returned to Germany.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

Answer

Yes.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

ITALY / ITALIE

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

Italy is bound by the international legal Framework concerning the fighting of maritime piracy and other illegal acts at sea which consist of :

- United Nation Convention on high sea adopted in Ginevra 29th April 1958

- United Nations Convention on the Law of the Sea (UNCLOS) adopted in Montego Bay on 10 December 1982.

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988.

As a Member State of European Union Italy is also bound by the following EU instruments:

- Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (ATALANTA)

- Council Decision 2009/293/PESC concerning the Exchange of Letters between the European Union and the Government of Kenya on the conditions and modalities for the transfer of persons suspected of having committed acts of piracy and detained by the European Union-led naval force (EUNAVFOR), and seized property in the possession of EUNAVFOR, from EUNAVFOR to Kenya and for their treatment after such transfer

- Council decision 2009/88/PESC concerning the conclusion of the Agreement between the European Union and the Republic of Djibouti on the status of the European Union-led forces in the Republic of Djibouti in the framework of the EU military operation Atalanta

- Commission Recommendation 2010/159/UE on measures for self-protection and the prevention of piracy and armed robbery against ships.

This recommendation provides Members State with best practice to deter piracy in the Gulf of Aden and off the coast of Somalia.

These instruments represent an important international framework that aims to fight and prevent sea piracy and other illegal acts at sea.

However the question could be raised about the effective and full implementation by all States of this instruments.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

Italy has implemented ATALANTA decision by Law n. 12 of 24 th February 2009.

At art. 2 of the law states that crimes committed by foreigners in the territories or on the high seas where interventions and international missions take place, against the State or Italian citizens

participants in the interventions and the missions, are punished always at the request of the Minister of Justice and after consulting the Minister defense for crimes committed against members of the Armed Forces.

Art. 5, paragraph 5, states that the offenses of piracy and ship suspected of piracy, whether committed on the high seas, whether committed in the territorial waters affected by ATALANTA mission, against the State, its properties or Italian citizens, are punished by the Italian judicial authority. In this cases it is not necessary the presence of the offender in the national territory nor the request of procedure from Ministry of Justice.

Except for this cases, the exercise of jurisdiction is provided by the international agreements and rules contained in Joint Action 2008/851/PESC and Decision 2009/293/PESC.

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

Italian navigation code at articles 1135 and 1136 describes and criminalize the offence of “Piracy” and “Vessel suspected of piracy”.

According to art. 1135 of the Italian navigation code (Piracy) the vessel captain or a commanding officer of a National or foreign ship that commits acts of piracy in order to damage a national or foreign ship or commits violence on people on board of a national or foreign ship, is punished with the detention from 10 to 20 years.

For the other members of the crew and unrelated people the penalty is reduced.

According art. 1136 of the Italian navigation code (Vessel suspected of piracy), the vessel captain or a commanding officer of a National or foreign vessel, that owns illegally weaponry, sails without

ship’s paper, is punished with the detention from 5 to 10 years. For the other members of the crew and unrelated people the penalty is reduced.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

On 30th September 2012 an Italian Navy warship called “Libeccio”, under the ATALANTA mission in the Indian Ocean, arrested 10 Somali nationals who had committed acts of piracy against a Maltese and an Iranian vessels with the subsequent kidnapping of the crew. After the capture the judge for preliminary investigations authorized the application of custodial measures in prison.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

N/A

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

N/A

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

Italian legislation (Law 24 th February 2009, n. 12 concerning the Italian participation in international missions; law 31 January 2002, n. 6 urgent provision concerning the participation of military staff in the international operation called "Enduring Freedom"; law 22 July 2009, n. 100 urgent provision for the contrast of piracy) is the legal basis for such a case.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

According art. 5 of the law 24th February 2009, n. 12 the arrest on board of a person suspected of piracy or robbery at sea maintains its efficacy if the report is transmitted to the public prosecutor and the hearing take place with the participation of the defender by 48 hours.

The defender or his substituted and the arrested may consult in confidence, by means of technical devices. The arrested has also the right to be assisted, in the place where is located, by another defender of confidence or by an officer present at the place. After entry into the national territory, the accused has the right to be further interrogated in the usual forms.

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

According art. 5 of the law 24th February 2009, n. 12, the arrest on board of a person suspected of piracy or robbery at sea maintains its efficacy if the report is transmitted to the public prosecutor and the hearing take place with the participation of the defender by 48 hours. Public prosecutor has the due to inform the defender of the arrested.

The prosecutor proceeds to a distance interrogation and hearing of validation before the judge for preliminary investigations by means of a video a link or audiovisual link, connecting the office of the public prosecutor with the court where the hearing takes place and the place where the accused is detained, in order to ensure the contextual effective and mutual visibility of the people in both places.

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

In the absence of specific provisions about the maximum duration of custody in this cases, the general rules of the Criminal Procedural Code find application.

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

No specific provision are provided

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

No.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

Italy has not signed such agreements. However, as a Member State of the European Union it participates in the agreements concluded by UE with Seychelles, Mauritius and Kenya.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

N/A

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

Yes

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

N/A

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

N/A

LATVIA / LETTONIE

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

Response: The existing international legal framework is not sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

Response: In the criminal law there is no specific clause for the piracy and robbery at sea. However, current legislation prescribe penalties for criminal actions which correspond classification of piracy and robbery.

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

Response: In the criminal law there is no specific clause for the piracy and robbery at sea.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

Response: No such cases.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

Response: No such cases.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

Response: Such operation was conducted. More details could not be given.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

Response: All actions are conducted in accordance with IMB (International Maritime Bureay) and IMO (International Maritime Organisation) recommendations and BMP (best management practice).

8) Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?

Response: All actions are conducted in accordance with IMB (International Maritime Bureay) and IMO (International Maritime Organisation) recommendations and BMP (best management practice).

9) How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?

Response: Latvian legislation does not prescribe such exactly actions and are considered as any other offence according to respective legislation.

10) How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?

Response: Latvian legislation does not prescribe such exactly actions and are considered as any other offence according to respective legislation.

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

Response: Latvia does not ensure participation of military vessels in the piracy-prone areas of the high seas.

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the*

investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?

Response: Latvia does not ensure participation of military vessels in the piracy-prone areas of the high seas.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

Response: Due to confidential status of the issue we do not have rights to provide you with additional information.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

Response: Due to confidential status of the issue we do not have rights to provide you with additional information.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

Response: During the last 12 months ships flying the Latvian flag have not crossed piracy-prone parts of international trade routes.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

Response: Latvian legislation does not prescribe such activities and procedures.

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

Response: Latvian legislation does not prescribe such activities and procedures. In case the number of ships flying the Latvian flag in the piracy-prone parts of international trade routes will increase the appropriate amendments to the national legislation will be considered.

LITHUANIA / LITUANIE

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

International legal framework lacks certainty. There is the United Nations Convention on the Law of the Sea (further in the text – UNCLOS) which defines piracy as an extraterritorial crime that targets crews and vessels which the transgressor commits on the high seas. But while the nature of the crime of piracy has evolved dramatically in recent decades, the international piracy law remains largely unchanged over the last two centuries. Of course, modern treaties now govern maritime law, along with a number of the United Nation Security Council resolutions but the substance remains firmly rooted in the earlier legal treatment of piracy. After the *Achille Lauro* incident it was realized that UNCLOS has gaps, because the UNCLOS' limitations are obvious: there is a restriction of the definition of piracy to "private" ends, the geographical restriction of piracy to the high seas (and the related issues of hot pursuit), the two ship requirement, etc. After the *Achille Lauro* incident, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (further in the text – SUA) was adopted. At first it seemed like a promising solution in the fight against piracy but in practice it has been a legal tool of limited effectiveness because SUA does not explicitly criminalize piracy, is not sufficiently specific regarding sanctions, the state has to have direct relation with the offence in order to confiscate the ship in territorial waters, there is no right of visit when there is a suspicion that a ship is controlled by pirates, SUA cannot be invoked if the state has not signed it.

Armed robbery can only be committed in the territorial sea but in practice the distinction between piracy and armed robbery is quite slight: armed robbery can easily turn to piracy because it might be a question of several meters.

The legal framework could be improved bringing more legal certainty, uniformity and effectiveness in a fight against piracy and armed robbery.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

In the Criminal Code of Lithuania (further in the text – CC) robbery is criminalized under the Article 180. According to it:

1. A person who, through the use of physical violence or by threatening the immediate use thereof or by otherwise depriving of a possibility of resistance or by taking advantage of the helpless state of the victim, seizes another's property shall be punished by arrest or by imprisonment for the term of up to six years.

2. A person who commits the robbery by breaking into premises or using a weapon other than a firearm, a knife or another item specially designed to injure a person shall be punished by imprisonment for a term of up to seven years.

3. A person who commits a robbery by using a firearm or an explosive or, having committed a robbery, seizes a property of a high value or the valuables of a considerable scientific, historical or cultural significance or commits the robbery by participating in an organized group shall be punished by imprisonment for a term of two up to ten years.

As far as piracy at sea is concerned Lithuania does not have any specific provision in CC, but there are particular articles which in one or another way "cover" certain aspects of piracy at sea (Article 180 of CC – Robbery (as it was mentioned already), Article 251 of CC – Hijacking of an Aircraft, Ship or Fixed Platform on a Continental Shelf, Article 252 of CC – Hostage Taking). Having the aim to implement the provisions of UNCLOS, Draft Amendments to CC were drawn up (supplementing CC with the additional Article 252^1 criminalizing actions of piracy at sea). This Draft Amendment to CC has already been approved after delivering it in the Parliament (Seimas) and is being further analyzed in certain Committees of the Parliament (Seimas).

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

See the answer to question No. 2.

The definition of piracy is not provided in national legislation directly. Nevertheless, the Draft Amendment to CC implements the provisions of the UNCLOS where in Article 101 the definition of piracy is provided.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

Lithuania does not have cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of Lithuania.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

Lithuania does not have information about cases when persons suspected of piracy were released.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

Lithuania has not conducted operations to release a captured vessel flying the flag of Lithuania, members of a crew who were citizens of Lithuania; neither has Lithuania taken part in freeing the vessels flying the flags of foreign states but having Lithuanian citizens among their crew.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

According to the provisions of the Code of Criminal Procedure of Lithuania (further in the text – CCP) a vessel captain has a right to fulfill the functions of pretrial investigation (Article 165, part 2 of CCP).

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

The package of enjoyed rights by person arrested on suspicion of robbery at sea is declared in Article No. 44 of CCP (including the right to defence, interpreting services, etc.).

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

Duration of custody of a person suspected of robbery at sea is governed according to general provisions of CCP (Article 140, part 4), which declares that duration of custody cannot last more than it is necessary for ascertaining the identity of a person and for fulfilling other required procedural actions. The maximum duration of custody is 48 hours. <…> if the person who is in custody has to be arrested, during the period of 48 hours he has to be delivered to the judge which decides the question of an arrest.

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

See the answer to question No. 9.

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

There are no specific provisions in legislation of Lithuania on ensuring the participation of investigators, prosecutors and judges on board of military vessels escorting commercial vessels and patrolling piracy-prone areas of the high seas.

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

Lithuania is a party to the European Convention on Mutual Assistance in Criminal Matters of 1959, which has a provision of participation of officials and interested persons if the requested Party consents in the execution of the letters rogatory (Article 4). Lithuania is also a party to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 2001 (further in the text – Second Additional Protocol). Article 2 supplemented Article 4 of the European Convention on Mutual Assistance in Criminal Matters of 1959 by the provision “requests for the presence of such officials or interested persons should not be refused where that presence is likely to render the execution of the request for assistance more responsive to the needs of the requesting Party and, therefore, likely to avoid the need for supplementary requests for assistance”. According to Article 20 of the Second Additional Protocol there is also a possibility by mutual agreement for the competent authorities of two or more Parties to set up a joint investigation team for a specific purpose and a limited period to carry out criminal investigations in one or more of the Parties setting up the team.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

On 12 June 2012, the Parliament (Seimas) of Lithuania adopted a resolution No. XI-2059, regulating sending of military and civilian personnel to operations “Atalanta” and “Ocean shield”. When the personnel is sent, the military personnel involved in the operation “Atalanta” can arrest, detain and transfer persons suspected of having committed or who have committed acts of piracy or armed robbery in the areas where they are present. In such case the suspects could be prosecuted by an EU member state or by Kenya under the agreement signed with the EU on 6 March 2009 giving the Kenyan authorities the right to prosecute. An exchange of letters concluded on 30 October 2009 between the EU and the Republic of Seychelles allows the transfer of suspected pirates and armed robbers apprehended by “Atalanta” in the operation area.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

There is no case practice of the transfer of persons suspected of piracy to coastal States for further criminal prosecution, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

There is no practice when commercial vessels flying the flag of Lithuania use the services of private military and security companies available for escorting vessels through piracy-prone parts of international trade routes.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

Irrelevant.

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

Irrelevant.

NORWAY / NORVEGE

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

Norway considers the existing legal framework to be satisfactory as it provides the necessary legal basis for effectively combating piracy. In our view, the main challenge facing the international community today is not lack of rules and regulations. Rather, there is a potential to strengthen the national implementation and compliance with the existing rules. Moreover, other efforts of a more practical and political nature should be strengthened, such as international cooperation and dialogue, capacity building and mobilization of political will to address the piracy issue.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

The Norwegian legislation is not especially adapted to prosecute persons suspected of piracy and robbery at sea, but see answer to question no.8

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

The general Civil Penal Code has no specific article on piracy. Piracy falls within the article on aggravated theft (article 258). Contravention is liable even when conducted abroad, regardless of the perpetrators citizenship.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your* State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?

Yes, in connection with the national contribution to the EU-led operation Atalanta. Suspected pirates released.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

Yes. Due to lack of evidence to support prosecution.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

No

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

UNCLOS articles 100-107. Relevant resolutions of the UN Security Council. (Latest nr. 2020). National legislation and human rights obligations under relevant international law.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

The Norwegian legislation is not especially adapted to prosecute persons suspected of piracy and robbery at sea, but our Act on Criminal Procedure (1981) is assumed to apply also to persons arrested on such suspicion when they undergo legal proceedings on board a Norwegian vessel, as far as it can be practised.

Under the Act on Criminal Procedure a suspect has the right to defense (articles 94-100b), and the act also implies the right to interpreting services, but some of the requirements are difficult to fulfil on board a vessel at sea. For example, according to article 98 a suspect is entitled to a defense counsel as soon as it is clear that he will not be released within 24 hours after the arrest, a requirement which normally will be difficult to meet in this situation.

The application of the Act on Criminal Procedure is confined by international customary law and agreement with another state (article 4).

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

According to the Act on Criminal Procedure an arrested person shall be brought before a judge ("the district court") as soon as possible and at the latest the third day after the arrest (article 183). If the accused is a minor, the time limit is the day after the arrest. Again, the distance from the vessel to the nearest district court complicates the fulfilment of the requirements of the act.

A possible delay can be remedied to some extent by seeking the court's decision without the accused present, based on the available documentary evidence, and later make the accused to appear before the court as soon as possible.

The duration of custody can not exceed four weeks at the first arraignment (article 185). The custody can be prolonged however, by decision of the court, for up to four weeks at a time.

10) How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?

The Act on Criminal Procedure does not establish a maximum period of custody as such, but the court shall release the accused if it finds that the investigation lacks due speed and that continued custody is unreasonable (article 185). Furthermore, custody can only take place as long as it is not deemed a disproportionate intervention (article 170a).

11) How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?

Norwegian military vessels escorting commercial vessels and patrolling piracy-prone areas of the high seas are not manned with civil investigators or prosecutors, and their participation will have to take place by call-out from case to case (see next paragraph). Judges will not be deployed to national warships.

Trained military personnel are deployed aboard warships conducting anti-piracy operations to provide investigatory expertise. A legal officer will be deployed to support the legal process and provide information to the national prosecutor's office. National police and prosecutors may assist this process when needed.

12) Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?

Norway has not signed any international agreements that address cooperation in law enforcement and investigation matters in piracy situations in particular.

13) Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?

No. Norway is not a party to any such agreements.

14) .*Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

No, hence not applicable.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

Yes, some do.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

Norwegian flagged ships are permitted to use PCASPs under certain conditions. This is regulated in Regulation No. 972 of 22 June 2004 as amended. The Regulation entered into force 1 July 2011. The regulation only applies when Norwegian flagged ships are sailing in, to or from areas subject to alert level 2 or 3 when sailing south of 30 degrees north latitude.

The Security Regulation provides detailed rules for ship operators who employ PCASPs and does not regulate the activities of the security companies as such. The requirements in the Regulation are based on the IMO guidelines for ship operators.

17) Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?

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POLAND / POLOGNE

1) Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?

International legal framework existing can be considered sufficient to effectively combat maritime piracy and other illegal acts at sea. The efforts should be focused on implementation of existing instruments regulating the issue of piracy, as well as on improvement of cooperation between the states involved in a prevention and a combat against this kind of criminal activity.

2) To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?

The most general regulation with regard to the Polish jurisdiction in the case of piracy is the principle of universal prosecution (also called the principle of universal repression) as provided for in Article 113 of the Penal Code and referring to any offences that Poland is obliged to prosecute under international agreements. However, the principles determining Polish jurisdiction also depend on the circumstances of an offence, nationality of the perpetrator and the issue of exercising the authority over the seized perpetrator.

1. If an offence was committed on board of a Polish ship:

If as a result of piracy an offence was committed on board of a Polish ship, Polish jurisdiction is a rule. Pursuant to Article 5 of the Penal Code, Polish penal law shall be applied to a perpetrator who committed a forbidden act on board of a Polish vessel, unless an international agreement to which Poland is a party stipulates otherwise. Any offender who perpetrated an offence on board of a Polish ship, regardless of his nationality and waters on which the ship was at the moment when offence was committed, unless that issue was otherwise specified in the international agreement ratified by Poland.

2. If the perpetrator of piracy is a Polish national:

In such cases, pursuant to Article 113 of the Penal Code, Polish jurisdiction is always applied – regardless of the provisions that are in force in the place when offence was committed and which state has seized the perpetrator.

3. If a perpetrator is a foreign national subject to the authority of the Polish state authorities:

Pursuant to Article 113 of the Penal Code, a Polish criminal act shall be applied with regard to any perpetrator of piracy who is a foreign national with respect to whom no decision on extradition has been taken.

Since for criminal repression in case of an offence stipulated in the convention, the provisions that are in force in the place where an offence was committed are irrelevant, it should be assumed that Article 113 of the Penal Code is applicable to both: piracy perpetrated at the open sea and the piracy at the internal waters and territorial sea of any state. A foreign perpetrator must be subject to the authority of the Polish authorities – i.e. he must be arrested by a Polish warship.

There are no grounds for applying Polish jurisdiction to foreign pirates seized by the navy of other states and kept on foreign warships or in the territory of other states. Polish jurisdiction is only when a foreigner is subject to the Polish authority so that a Polish side has a legal and physical capability of extraditing him to another state if extradition is requested or criminal proceedings involving his participation were carried out.

Pursuant to Article 92 (1) of the United Nations Convention on the law of the sea, done at Montego Bay on 10 December 1982, ships sail under the flag of only one state and, as a rule, are subject to its exclusive jurisdiction at the open sea. Article 105 of the same convention stipulates that on high seas or in any other place that is not subject to jurisdiction of any state, every state may seize a pirate ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith. Analogous provisions are stipulated in Articles 6 and 19 of the Geneva Convention on high seas of 29 April 1958. This means that if a foreign pirate has been seized in the high seas by a Polish ship, the exercise of Polish jurisdiction has its grounds also in international agreements to which Poland is a party, while if it has been seized by a foreign ship, Polish jurisdiction does not apply to it.

4. If the perpetrator is a foreigner seized by the authorities of another state:

As regards foreigners seized by other states and falling under the authority of those states, the Polish penal law may be applied in the following cases:

— pursuant to Article 110 § 1 of the Penal Code — if the piracy was targeted against the interests of the Republic of Poland, of a Polish national, of a Polish legal person or a Polish organizational unit having no legal personality or was of a terrorist nature. If such an act has been committed in a place that is not subject to any state authority, it is subject to the Polish jurisdiction in any case, however if the piracy was committed in the territory that is subject to jurisdiction of another state, e.g. on its internal waters or at the territorial sea, the accountability before the Polish court is conditioned of whether that act was also considered an offence by the act that was in force in the place where that act was committed.

— pursuant to Article 112 item 2 of the Penal Code – if the offender perpetrated against Polish officers. It could also be the case of pirates attacking a Polish warship and soldiers who are on board. In such

a situation Polish jurisdiction is always applied, regardless of the provisions that are in force in the place the act was committed.

3) What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?

The Polish Penal Code contains in Chapter XX detailed provisions regarding the acts of hijack, destruction or arming of a vessel committed under Polish jurisdiction.

Piracy as a crime is defined in art. 166 of the Polish Penal Code:

Article 166. § 1. Whoever, using a deceit or violence, or a threat to use such violence, takes control of a ship or an aircraft, shall be subject to the penalty of the deprivation of liberty for a term of between 2 and 12 years.
§ 2. Whoever, acting in the manner specified in § 1, brings about a direct danger to the life or health of many persons shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.
§ 3. If the consequence of the act specified in § 2 is the death of a person, or grievous bodily harm to many persons, the perpetrator shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.

There are other provisions of the Polish Penal Code related to piracy and robbery at sea:

Article 167. § 1. Whoever places on a ship or aircraft a device or substance threatening the safety of persons or a property of high value shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.
§ 2. The same punishment shall be imposed on anyone, who destroys, damages or renders unfit for use a navigational equipment or prevents operating thereof, when this may threaten the safety of persons.

Article 168. Whoever makes preparations for the offence specified in Article 163 § 1, Article 165 § 1, Article 166 § 1 or in Article 167 § 1, shall be subject to the penalty of deprivation of liberty for up to 3 years.

Article 169. § 1. Whoever voluntarily removed the impending danger shall not be subject to the penalty for the offence specified in Article 164 or 167.
§ 2. If the perpetrator of the offence specified in Article 163 § 1 or 2, Article 165 § 1 or 2 or in Article 166 § 2, voluntarily averted the impending danger to the life and health of many persons, the court may apply an extraordinary mitigation of the penalty.

§ 3. The court may apply an extraordinary mitigation of the penalty to the perpetrator of the offence specified in Article 166 § 1, if he transferred the control of vessel to an authorised person.

Article 170. Whoever arms or adapts a sea vessel designed to perform an act of piracy on the high seas, or agrees to serve on such a vessel shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

4) As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?

There have been no cases of capture of persons suspected of piracy (both in the open sea by a warship and civilian vessel flying the flag of our state) as far as Poland is concerned.

5) As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?

In Poland there have been no cases when persons suspected of piracy were released.

6) Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?

Poland has never conducted such operations.

7) What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?

According to the Polish Maritime Code:

Article 68 § 1 The captain may detain in a separate room, while traveling, a person whose behavior threatens the safety of the ship, people or property. Detention can last long until the arrival of the vessel to the nearest Polish port or to the port of state whose citizen is a detained person.

§ 2 In a case of dock of the vessel to a state other than specified in § 1, the captain shall inform Polish consular office and appropriate local authorities about a detention.

Article 72 § 1 If there is a crime committed on a ship, the captain is obliged to draw up a detailed notice of an offence, take appropriate measures to prevent the repeal of criminal responsibility a person suspected of committing a crime, secure evidences and, if appropriate, transfer a person suspected of committing a crime and a notice of an offense to the competent authority in the first Polish where the ship docks or to the craft of Polish Navy, Border Guard or Police.

According to the Regulation of the Minister of Infrastructure of 23 February 2005 *on the master course of action against a person suspected of having committed an offense against the safety of maritime navigation* if there was a crime committed on a ship or a person suspected of committing a crime was detained on a ship, the master informs a prosecutor at the home port of the ship about it. If the ship's destination is not the Polish port, the master shall, if there is such a possibility, transfer a suspected person and evidence to the captain of another ship flying the Polish banner which is heading to the Polish port or to a commander of a vessel belonging to the Polish Navy or Polish Border Police or Polish Border Guards.

If a detained person suspected of committing a crime is not a Polish citizen, the master shall inform the Minister of Justice by the agency of Director of the Maritime Office about the detention. The Minister of Justice takes a necessary action to provide information about the fact of detention to the competent authority of the state of citizenship of a suspected person. If a detained person is stateless, the Minister of Justice provides such information to the competent authority of the state a suspected person is a resident of.

The ship's captain, within its technical resources, allows a detained person to stay in contact with a representative of the state of citizenship of a suspected person; if the person is a stateless person - a representative of the state a person is a resident of. Such a representative has a right to visit a detained person on a ship. Determination of contact procedure requires the assistance of the Ministry of Justice.

If the vessel with a detained person docks a port of a foreign state before it docks a Polish port, the master notifies the Polish Consul about the detention, so he could pass this information to the competent authorities of this foreign state. The provisions of the Code of Criminal Procedure on the transfer of evidence abroad are applied.

8) Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?

There are no legal proceedings on board a vessel under Polish law.

9) How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?

See: answer to question 7.

10) How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?

See: answer to question 7.

11) How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?

Poland has had no experience in this field.

12) Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?

Poland has not signed such international agreements.

13) Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?

Poland is not a party to such agreements.

14) Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?

In Poland there have been no cases of such transfer.

15) Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?

Currently there is only one commercial vessel flying Polish flag which is operating in high risk area and there are no PCASP groups on board.

16) What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?

There are no such legislative regulations yet, but some steps have been taken to establish such provisions. Poland is a member of International Maritime Organization (IMO), which on 8 march 2012 issued a note entitled ‘Piracy and armed robbery against ships” and called upon the Member States to analyze and discuss the handling and treatment of firearms and privately contracted armed security personnel (PCASP) under their national laws. The Ministry of Transport, Construction and Maritime Economy of Poland began such a discussion and elaborated a respective communication with the assistance of the Ministry of Justice, Ministry of Foreign Affairs, Ministry of Internal Affairs, Ministry of Finance and Ministry of National Defense.

17) Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?

So far Poland has not had experience in this field.

PORTUGAL

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

Article 101 of the United Nations Convention on the Law of the Sea defines Piracy as consisting in any of the following acts: "

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)"

We find this definition to be inadequate, especially considering the excessive restrictiveness of its territorial application. In fact, the restriction of the concept of piracy to the High Seas, to places not subject to the jurisdiction of any State and (arguably) the Exclusive Economic Zone, excludes from sanction by international law the practice of similar acts in other maritime areas.

The exclusion of the concept of piracy of actions committed, attempted or threatened in inland, territorial and archipelagic waters leads to a situation of potential conceptual schizophrenia.

In fact, the restriction on the coastal State to criminalize, prosecute and punish acts of piracy practiced in waters under its jurisdiction undermines the effectiveness and efficiency of international law, meaning that when an act of violence or detention, or depredation takes place on the high waters it is forbidden, repressed and condemned, but when such act talks place a few meters away, in another sea area, international sanction is ceased upon and may even be legal under the legal system of the coastal State.

However, criticism of the Montego Bay Convention on this matter is not limited to the definition of piracy, but may also be extended to other articles that prove to be insufficient in the fight against piracy.

Article 100 establishes a duty to cooperate in the repression of piracy stating that all States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

However Article 105 on the seizure of a pirate ship or aircraft states that on the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

It is unfortunate that the UNCLOS does not recommend its parties to criminalize acts of piracy when committed in waters under their sovereignty. To do so, would suffice to impose on states a duty to repress piracy, but without the restriction on high waters and areas outside the jurisdiction of a State, as exhaustively listed in Article 100.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

Having ratified the United Nations Convention on the Law of the Sea on the 14th October 1997, the Portuguese criminal law does not, however, criminalize piracy as a crime *per se* , but rather the substantial actions that such a pirate attack may integrate.

In this regard, several actions undertaken by pirates may constitute a crime, as the crimes against the security of communications, capture or diversion of ship or aircraft (foreseen in article 287 of the Portuguese Criminal Code) or attack on the safety of transportation (article 288 of the Portuguese Criminal Code) together with crimes against property as robbery (article 210) or damage (articles 212), crimes against freedom as threat (article 153), coercion (article 154), kidnapping (article 158), slavery (article 159), trafficking in human beings (article 160) or abduction (article 161), offenses to the physical integrity (article 143) or crimes against life as murder (article 131).

As noted above, the United Nations Convention on the Law of the Sea does not oblige its Parties to prosecute crimes of piracy in high sea, but only allows them to do so. Considering this, the fact is that, under present circumstances, the Portuguese criminal law is not applicable to crimes of piracy committed in high seas.

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

Please see answer to the previous question.

As stated before, except for the crime of rape, Portugal has no universal jurisdiction on any of the offences that could in essence integrate a pirate attack. As a consequence, Portuguese courts would only have jurisdiction if the crime is committed on board a ship with the Portuguese flag, or a Portuguese citizen is its agent or victim and the perpetrator is found in Portugal.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

Portugal was integrated in two operations of the NATO Standing Maritime Group 1: with the frigate Corte-Real between March 24 and June 29, 2009 in Operation Allied Protector, and the frigate Álvares Cabral between 9 November 2009 and January 25, 2010 in operation Ocean Shield. Portugal commanded the naval force in the former.

The Portuguese war vessels detained some individuals in the Somalia region. However they have been released due to the fact that they cannot be prosecuted, according to the reasons explained before.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

Yes. Please see the previous answer.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

No.

7) What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?

Portuguese criminal law is not applicable to crimes of piracy committed in high seas.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

(…)

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

(…)

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

(…)

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

(…)

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

No.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

No.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

(…)

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

No.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

(…)

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

No incidents have been reported regarding the access to vessels flying the Portuguese flag.

SERBIA / SERBIE

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

Yes, it can.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

The Criminal Code of The Republic of Serbia proscribes the criminal offence of Piracy (Article 294) and criminal offence Hijacking of Aircraft, Ships or Other Conveyances (Article 293.).

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

In The Criminal Code of The Republic of Serbia are three articles about piracy and robbery at sea:

Applicability of Criminal Legislation to the Territory of the Republic of Serbia

Article 6

(1) Criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence on its territory.
(2) Criminal legislation of the Republic of Serbia shall also apply to anyone committing a criminal offence on a domestic vessel, irrespective of the location of that vessel at the time of commission of the offence.
(3) Criminal legislation of the Republic of Serbia shall also apply to anyone committing a criminal offence on a domestic civil aircraft while in flight, or on a domestic military aircraft, irrespective of the location of that aircraft at the time of commission of the criminal offence.
(4) Where in the cases referred to in paragraphs 1 to 3 of this Article criminal proceedings were instituted or concluded in a foreign state, criminal prosecution in Serbia shall be initiated only with the consent of the Republican Public Prosecutor.
(5) Criminal prosecution of foreign nationals in the cases referred to in paragraphs 1 to 3 of this Article may be ceded to a foreign state, under the condition of reciprocity.

Hijacking of Aircraft, Ships or Other Conveyances

Article 293

(1) Whoever by force or threat of force takes control of an aircraft in flight, or a ship while navigating, or another public conveyance in motion, shall be punished by imprisonment of from two to ten years.

(2) If the offence referred to in paragraph 1 of this Article results in grievous bodily harm
or caused substantial damage, the offender shall be punished by imprisonment of from two to twelve years.

(3) If the offence referred to in paragraph 1 of this Article results in the death of one or more persons, the offender shall be punished by imprisonment of from five to fifteen years.

Piracy

Article 294

(1) A crew member or passenger of a ship who while at open sea or a location not under authority of any state commits violence or robbery against persons on another ship, halts, hijacks, damages or destroys the other ship or goods therein, or causes damage of substantial extent, shall be punished by imprisonment of from two to twelve years.

(2) If the offence referred to in paragraph 1 of this Article results in death of one or more persons, the offender shall be punished by imprisonment of from five to fifteen years.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

No, it has not.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

No, it has not.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

No, it has not.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

The United Nations Convention on The Law of The Sea, ratified by The Republic of Serbia since March 12th 2001 and United Nations Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation, ratified by The Republic of Serbia since March 13th 2004 and Protocol to The Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation ratified 29th March 2010.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

Persons arrested on suspicion of piracy or robbery at sea are provided rights guarantied by The Criminal Procedure Code of The Republic of Serbia, accordingly The United Nations Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Protocol to The Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation in case if they are arrested by the commanding officer of the ship flying the flag of The Republic of Serbia.

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

Duration of custody is not specific proscribed in case if person suspected of piracy and robbery sea is arrested on the ship flying the flag of The Republic of Serbia. According to Article 176 of Law of Maritime navigation of The Republic of Serbia commanding officer of the ship flying the flag of The Republic of Serbia has right to keep in custody suspected person till the extradition to the administration of justice or to another State Party of The United Nations Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation for criminal prosecution and Protocol to The Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation.

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

The Republic of Serbia applies Article 10 para. 2 of The Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation for criminal prosecution and Protocol to The Convention.

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

The Republic of Serbia is landlocked country and does not have any military vessels navigate areas of the high seas.

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

No, it has not.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

No, it is not.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

No, it has not.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

No, they do not.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

The Republic of Serbia is landlocked country and does not have any military vessels navigate areas of the high seas and does not have any regulation according to that question.

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

No, it has not.

APPENDIX XXIII

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

EXISTING COUNCIL OF EUROPE INSTRUMENTS AND ACTIVITIES PERTAINING TO QUASI-COMPULSORY MEASURES (QCM)

Discussion paper prepared by the CDPC Secretariat
Directorate General I – Human Rights and Rule of Law

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During its 62nd Plenary Session (29 May – 1 June 2012), the European Committee on Crime Problems (CDPC) requested the Secretariat to prepare an overview of existing Council of Europe instruments and activities pertaining to quasi-compulsory measures (QCM). This decision followed the presentation of a document prepared by the Belgian delegation proposing this subject for possible future examination by the CDPC.

This report provides an overview of such measures including activities of the Council of Europe (CoE). An explanation will first be given regarding the distinction made between quasi-compulsory measures addressing drug offenders and those addressing sex offenders (I). A section is also dedicated to the ethical concerns regarding quasi-compulsory measures (II) in order to give an insight into these measures' real efficiency (III). Finally, the work carried out by the CoE and other international organisations will be discussed (IV) before a final conclusion (V).

I. QUASI-COMPULSORY MEASURES

A quasi-compulsory measure is mostly a particular alternative to imprisonment. It refers to the choice that is given to an offender to either undergo a treatment or face a penal sanction for crimes for which he or she has been (or may be) convicted.[79] Essentially, these measures may apply to two main types of offenders: on the one hand, drug offenders and, on the other hand, sex offenders.

In broad terms, a settlement (plea agreement), an instance of plea bargaining, an accepted probation measure to avoid imprisonment, accepting a voluntary search are all quasi-compulsory measures and require a framework of protective measures. In countries where the "opportunity principle" exists, the possibility can also be to accept a treatment in exchange for closing the case.

This raises obvious and unavoidable questions including: What if it appears that the context has changed? What if the offender has miscalculated by underestimation the accepted charge? Are there mandatory rules to reconsider the "agreement"?

1. Drug offenders

As far as drug offenders are concerned, it is important to highlight that quasi-compulsory treatment is generally used for a particular group: drug dependent offenders. This group is made up of dependent drug users who have committed crimes, other than drug possession, that would engender penal sanctions.[80] Consequently, it excludes non-problematic drug users and dependent drug users who have not committed any other crime than drug possession. The use of QCM for drug offenders is clearly restricted to minor offences and excludes serious crimes.

In the case of drug dependent offenders, the treatment is regarded as more effective than a prison sentence. The most important aim should be to treat the addiction. In other words, the offences committed by this group of offenders are related to their drug use directly. Therefore, a prison sentence would not have a deterring effect on them since the vital need is to deal with the origin of the problem which is the addiction itself.

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[79] The ethics and effectiveness of coerced treatment of drug users, Alex Stevens, PhD, Professor in Criminal Justice, University of Kent, September 2011.

[80] The ethics and effectiveness of coerced treatment of drug users, Alex Stevens, PhD, Professor in Criminal Justice, University of Kent, September 2011.

There are two types of coercive treatment. The first occurs when people who use drugs are ordered into treatment with no opportunity to provide informed consent to such treatment. This is called compulsory treatment. The second type occurs when drug users are given a choice of having treatment or facing a penal sanction that is justified on the basis of the crimes for which they have been (or may be) convicted. This is called quasi-compulsory treatment (QCT)"[81]. According to the Belgian paper presented at the CDPC, "a slight difference exists between both notions". Furthermore "the wording 'quasi-compulsory measures' is often used as a hybrid concept which lies between voluntary and compulsory treatment"[82].

According to UNODC's discussion paper (2009) 'Treatment as an alternative to criminal justice sanctions is specifically encouraged in the international drug control conventions and it has been found to be more effective than imprisonment in encouraging recovery from drug dependence and reducing drug related crime. It can be provided in ways that do not violate the rights of the patients, provided that the decision to refuse treatment remains in the hands of the drug user and the patient's autonomy and human rights are respected.'[83]

2. Sex offenders

In the case of sex offenders, the treatment is often compulsory or is used in addition to imprisonment. Since the offence committed is obviously more serious with strong potential consequences for the victims, giving perpetrators of such crimes a choice between treatment and imprisonment might reduce the deterring effect of punishment for these crimes and might also victimise the victims once more as they might feel that "justice has not been done". It is true that the effectiveness of the measure could rapidly be questioned.

One of the methods often used to deal with high risk sex offenders is chemical castration. Chemical castration is "the use of drugs to reduce libido".[84] For instance in November 2009, in response to a high number of sex offences committed against children, Poland amended its Criminal Code and introduced legal ground allowing courts to apply pharmacological treatment or psychotherapy to sex offenders in order to prevent the society from reoffending (Article 95a of the Criminal Code).

In 2009, a pilot scheme was launched in the United Kingdom at HMP Whatton which, by using drugs 'intervention', aims to reduce the sex drive of sex offenders in a bid to cut offending. This scheme includes chemical castration but mostly involves anti-depressants. The prisoners are all volunteers and the initial evaluation appears to show that the scheme is working.[85]

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[81] Human Rights and Drugs, Volume 2, No. 1, The ethics and effectiveness of coerced treatment of people who use drugs, Alex Stevens, PhD, 2012

[82] European Committee on Crime Problems (CDPC), Alternative measures to imprisonment, Explicative paper by Belgium

[83] United Nations Office on Drugs and Crime (UNODC) 'From coercion to cohesion: Treating drug dependence

through health care, not punishment – Discussion Paper (2009)

[84] Chemical castration, Collins English dictionary, online

[85] http://www.bbc.co.uk/news/uk-18402203

There is also another type of castration, in this case irreversible, the surgical method, which is done, with the offender's consent, in the Czech Republic and in Germany. German law provides extremely strict requirements for the permissibility of surgical castration. In particular, adequate and comprehensive information must be provided to the person concerned previous to the required voluntary consent and milder measures than surgical castration must first be considered. A group of experts has to examine and confirm conformity with the legal requirements. In fact, surgical castration is performed only in very few exceptional cases in Germany. As in Germany, in the Czech Republic also several requirements have to be met, namely: adequate and comprehensive information provided to the offender. Surgical castration is proposed and considered if the offender requests it himself and only if other measures are non-applicable (e.g. state of health prevents use of chemical castration), the offender's consent is given and after an examination and a recommendation by a group of experts.

There is currently much debate between the European states about this invasive option of castration. Indeed, some consider surgical castration as being a treatment and not a punishment but most countries believe the contrary. In addition, several specialists have taken part in this debate. For example, the psychologist W.L. Baker considers that "the key question for practitioners to ask is whether the treatment exceeds the cure. As surgical castration prevents all sexual activity, it can only be classified as punishment and never treatment"[86].

In conclusion, although most European states seem to be against the use of surgical castration, we can observe that over the years more and more of them have passed legislation which allows for chemical castration of sex offenders. The most recent example is Moldova, in March 2012. The Parliament of Estonia adopted in January 2011 new amendments to different relevant laws that enable to partially replace imprisonment with combined treatment for sex offenders. Combined treatment includes: (1) psychiatric help (therapy sessions etc) and (2) when needed, pharmacotherapy (so-called chemical castration; if needed antidepressants etc). According to the new law, if a court imposes a prison term from 6 months up to two years and the offender is at least 18 years old (so the combined treatment is only for adult sex offenders), the court with informed written consent of the convicted offender, may partially substitute imprisonment by combined treatment for sex offenders. The term of the combined treatment for sex offenders is from 18 months to 3 years, so it can exceed the term of sentenced imprisonment. The new law will enter into force on 1 June 2013.

II. ETHICAL CONCERNS REGARDING QUASI-COMPULSORY MEASURES

1. Quasi-compulsory measures and human rights

With regard to the European Convention on Human Rights (ECHR), there does not appear to be any case law which directly concerns the issue of quasi-compulsory measures. However in the *Toomey v the United Kingdom*[87] case, which was declared inadmissible for, *inter alia*, time-limit reasons, the ECHR did recognise that a Penile Polygraph (PPG) test was used and that this raises complex issues of fact and law under Article 3 the Convention. Moreover, in this case, the applicant claimed

[86] Legal and Ethical issues when using Antiandrogenic Parmacotherapy with Sex Offenders, Karen Harrison, PhD, University of the West of England – Bristol, 2008

[87] Toomey v. the United Kingdom (1998), Application no. 37231/97

that his consideration for parole was conditional on his participation in the PPG tests. At the same time he also argued that the use of this text amounted to cruel, inhuman and degrading treatment.

Additionally in the case *Bizzoto v. Greece*[88] the ECHR recognised "the humanitarian nature" of the provisions of Greek Law nº 1729 which provides a support programme to habitual users of drugs. Also in the case of *Gardel v. France*[89] the ECHR stipulates that the sex offenders' register is designed to prevent persons who have committed sexual offences or violent crimes from reoffending as it serves a "preventive and deterrent purpose". Furthermore, the ECHR stipulates that it is unnecessary to have the authorisation of the sex offender to be included on the register as it is a public order measure.

Nevertheless it is important that the use of QCM should be in accordance with Article 3, Article 5 and Article 6 of the Convention. Furthermore, the treatment must not be inhuman or degrading and must avoid the infliction of harm on the person being treated. The right to liberty can be restricted both when in prison or undergoing treatment and in order to avoid a violation of Article 5 of the ECHR, this deprivation of liberty must be the least restrictive from the point of view of the objectives of treatment (*not* the objectives of punishment) and the period of any judicial order to remain in treatment should be limited, be subject to review and be of a duration which is not longer than the usual punishment for the offence.

Regarding the right to fair trial, ethical concerns arise. The informed consent by the offender must be guaranteed and no arbitrary detention should be executed. Moreover, the presumption of innocence should not be violated. Offering a QCM at the pre-trial stage could be a violation of this principle unless the evidence is irrefutable that the person has committed the offence, i.e. when there is a confession or when he or she was caught in the act without a contradiction of the evidence. Furthermore, the person should not be punished for failing in the treatment.

2. Issues concerning the use of quasi-compulsory treatment

The most ethical concerns relate to the treatment of sex offenders.

One of the main ethical issues concerning quasi-compulsory treatment is the importance of the negative side effects. These side effects include fatigue, hypersomnia, lethargy, depression, and a decrease in body hair, an increase in scalp hair and weight gain.[90] Avoidance of the infliction of harm on the person being treated has been guaranteed in all codes of medical ethics since the Hippocratic oath.

Furthermore the concept of proportionality in sentencing should be taken into account. Classically, proportionality has been taken to mean that the harm caused by the punishment must be no greater than the harm that the offender has caused to other people. This principle is not yet included in UN instruments, but it is included in the European Charter of Fundamental Rights, Article 49, 3 of which states that '[t]he severity of penalties must not be disproportionate to the criminal offence'.

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[88] Bizzoto v. Greece (1996), Application no. 22126/93

[89] Gardel v. France (2010), Application no. 16428/05

[90] Legal and Ethical issues when using Antiandrogenic Pharmacotherapy with Sex Offenders, Karen Harrison, Sexual Offender Treatment, Volume 3 (2008), Issue 2.

Another ethical concern relates to the availability of treatments: the question of knowing whether pharmacotherapy, in other words treatment through the administration of drugs, should be available to all those who need or request it or only available to those who have been convicted of a sexual offence.

The author J.M. Money (1979) argues that medical treatment of this type should be available for all. Indeed, it could be used to prevent offences. Someone who has sexually deviant thoughts should be allowed to undertake such a programme.

A 1986 World Health Organization consensus view was that legally coerced drug treatment (Porter, Arif, & Curran, 1986) was legally and ethically justified if: (1) the rights of the individuals were protected by "due process", and (2) if effective and humane treatment was provided.[91]

III. EFFICIENCY OF QUASI-COMPULSORY TREATMENTS

1. Efficient treatment

a. Quasi-compulsory treatments are more likely to work because the offenders are given a choice

People who want to do something are more likely to achieve it than people who are forced to do it. Bearing this in mind, offenders could be advised on the best way to achieve their own goals instead of being reminded on the potential threat of negative consequences that will occur if they do not change[92]. Most of the time, quasi-compulsory treatments are accepted by the offender because they include a lot of advantages:

- those who agree to the treatment as an alternative to incarceration can stay with their family and have more liberty than in prison;
- those who agree to change their behaviour are more motivated to do so of their own accord than when they are forced to do so. Alternatively they may be encouraged to do so by their families, which is a more effective motivator than legal coercion.

Only serious drug dependent offenders who are aware of their problems and who consent to treatment are more likely to succeed because they are highly motivated than those who do not acknowledge their drug-related deviant behaviour. Indeed, the 'hitting rock bottom' theory presumes that people who have the more serious drug problems are more likely to have other severe personal problems and thus seek help and change their drug or alcohol behaviour.

However it should be borne in mind that all voluntary or quasi-compulsory treatments can be said to have some elements of pressure or persuasion such as informal social pressure or threat of negative consequences from family and friends. At the same time this may be another reason why quasi-compulsory treatments are more likely to work.

b) Low costs which enable a higher efficiency

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[91] CRIME AND JUSTICE Bulletin No. 144, September 2010, NSW Bureau of Crime Statistics and Research: Legally coerced treatment for drug using offenders: ethical and policy issues by Wayne Hall and Jayne Lucke

[92] Prevention for recidivism : the French delay, "Good Lives Model" : cutting-edge of the condemned monitoring, Sarah Dindo and Barbara Liaras

Treatment is generally cheaper than incarceration. For example, a study of the Maryland State Commission on Criminal Justice Sentencing shows that Maryland's use of alternative sanctions has reduced the annual cost of housing an offender, from 20 000$ to 4 000$.[93]

c) Convincing results

The rate of recidivism for sexual offenders is very high: 18.9%[94] which can lead us to think that it is quite important that offenders undertake treatment in order to make sure that our streets are safe.

Another reason for supporting the use of quasi-compulsory treatments may be found in the comments of those who have undertaken such programmes: "I realised walk down the streets, see boys I found sexually attractive, and not be possessed by thoughts about having sex with them … It took that edge off" (Russel, 1997: 431)[95]

2. The efficiency of compulsory treatments can be severely questioned

There are many reasons why compulsory treatment cannot be efficient.

Firstly, these treatments do not require the consent of the offender. Thus because they do not pre-suppose the will of the offender, their efficacy can be disputed. For example, in Australia, the police may make an offer of release to drug dependent offenders where the bail conditions include an obligation to attend a treatment programme.[96] In this case, the treatment would be obligatory and therefore less efficient. In the same way, California employs pharmacotherapy as a condition of parole release and this is obligatory for all sexual offenders where the victim is under 12.

Secondly, there are problems concerning the way of administrating the treatment to the sexual offenders. If the treatment involves taking pills, then the offender can fail to take them. Even if the treatment is administrated through injections, the effects can be counteracted by obtaining testosterone illegally.

Thirdly, even if the offender has consented to the treatment, one can still question whether the offender is not just simply consenting to the lesser evil. Moreover, the motivation of the offender can be questioned because he could be motivated by self-hate or desire to punish himself/herself[97]

IV. WORK CARRIED OUT BY THE COUNCIL OF EUROPE AND INTERNATIONAL ORGANISATIONS IN THIS AREA

[93] Treatment or Incarceration? National and State Findings on the Efficacy and cost savings of Drugs Treatment versus Imprisonment by Doug McVay, Vincent Schiraldi and Jason Ziedenberg, January 2004.

[94] About Recidivism, A meta-analysis, by Frans Gieles.

[95] Legal and Ethical issues when using Antiandrogenic Pharmacotherapy with Sex Offenders, Karen Harrison, Sexual Offender Treatment, Volume 3 (2008), Issue 2.

[96] Mandatory Treatment and perception of treatment effectiveness, Crime and Misconduct Commission, Research and Issues.

[97] Legal and Ethical issues when using Antiandrogenic Pharmacotherapy with Sex Offenders, Karen Harrison, Sexual Offender Treatment, Volume 3 (2008), Issue 2.

1. Activities of the Council of Europe

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has mentioned compulsory treatment in several of its country reports.

From 2007 to 2010 the Pompidou group was active in the field of quasi-compulsory treatment and other alternative measures to imprisonment, with different activities and meetings of the Criminal Justice Platform (PGCJP). The PGCJP, in close co-operation with European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), developed guidelines[98] on the application of quasi coerced treatments on drug-dependent offenders (P-PG-CJ (2007) 21).

The activities of the Platform not only included the preparation of a survey on the quasi-compulsory treatments of drug-dependent offenders and the setting up of an open-ended working party on a quasi-compulsory treatment communication strategy (P-PG-CJ (2008) 15), but also the publication of an overview of national experiences with quasi-coerced treatments of drug-dependent offenders (P-PG-CJ (2010) 3). Furthermore, a Conference on quasi-coerced treatment and other alternatives to imprisonment was organised in Bucarest on 11-12 October 2007 and a thematic meeting on monitoring and evaluating national experience with quasi-coerced treatment took place in Strasbourg on 27 May 2010.

Recently this issue was also raised in the context of the Parliamentary Assembly of the CoE with a motion for a resolution (Doc. 12659) presented by Mr Gardetto and others on 22 June 2011. Emphasis was put on the use of alternatives to custodial sentences in this regard in order to address the legitimate security concerns of society and promote the rehabilitation of the offender. There has not (yet) been a follow-up of this motion.

2. Work of other International Organisations

Alternative measures to imprisonment, have been developed over the years by other international organisations. Article 36, 1(b) of the United Nations Single Convention on Narcotic Drugs of 1961 refers to the possible use of alternatives to conviction or punishment, such as measures of treatment, education, after-care, rehabilitation and social integration. The Office on Drugs and Crime of the United Nations (UNODC) published a report on custodial and non-custodial measures - alternatives to incarceration (2006) and a discussion paper entitled 'from coercion to cohesion: Treating drug dependence through health care, not punishment' in 2009.

Furthermore, the United Nations distributed a Handbook of basic principles and promising practices on Alternatives to Imprisonment[99] (2007) in order to support countries in the implementation of the rule of law and the development of criminal justice reform. The handbook provides information about alternatives to imprisonment at every stage of the criminal justice process; important considerations for the implementation of alternatives, including what various actors must do to ensure its success; and examples of systems that have reduced imprisonment. No specific mention is made of quasi-compulsory measures.

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[98] Guidelines on the 'quasi-compulsory' treatment of adult drug-dependent offenders, results from a survey of Council of Europe Member States, Tim McSweeney, Institute for Criminal Policy Research, School of Law, King's College London, United Kingdom, December 2008.

[99] From the Criminal Justice Handbook Series, United Nations, New York, 2007.

In this field the work of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) of the European Union should be mentioned. Objective 13 of the EU Action Plan (2005-2008) foresees further development of alternatives to imprisonment for drug abusers and drug services.[100] Along with this, multiple comparative studies have been carried out by the EMCDDA to map the different legal systems of EU Member States in this regard.

The National Institute on Drug Abuse (NIDA) produced a paper entitled Drug Facts: Treatment for Drug Abusers in the Criminal Justice System in 2006. Here it discusses how drug abuse treatment can be incorporated into the criminal justice system. This may include treatment as a condition of probation, drug courts that blend judicial monitoring and sanctions with treatment, treatment in prison followed by community-based treatment after discharge, and treatment under parole or probation supervision. Once again no specific mention is made of quasi-compulsory treatment or measures.

V. CONCLUSIONS

It may be concluded that despite scarce data and research regarding the efficiency of the quasi-compulsory measures, as well as the ethical issues which arise in relation to their use and more specifically regarding consent, they remain a plausible alternative to imprisonment.

Treating certain groups of offenders and dealing with the causes of their addiction problems is a more efficient way of reducing recidivism than prison. It should nevertheless be noted that while for some types of offenders quasi-compulsory treatment is successfully used in prison which provides a controlled setting allowing better screening, supervision and maintenance of the treatment, for the majority treatment will be successfully used in the community. Whatever the setting for quasi-compulsory treatment, informed consent needs to be sought as far as possible and ethical issues need to be addressed as the motivation for undergoing such treatment plays an important role in its success in the long run. Another important issue is the need to ensure continuity of treatment after release from prison for those offenders who have started quasi-compulsory treatment while in detention. The question of introduction of such a treatment at the pre-trial stage of the criminal proceedings needs to be carefully regulated by law especially regarding issues related to the presumption of innocence and to whether or not there should be negative consequences from dropping out of such treatment.

Other issues to be borne in mind are professional secrecy and how to deal with this in the context of quasi-compulsory treatment. Also the ways in which the treatment is administered and whether any kinds of treatment should be excluded should also be considered.

[100] EMCDDA, 2005, Belgium, Alternatives to imprisonment – targeting offending problem drug users in the EU.

APPENDIX XXIV

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 11 February / février 2013 CDPC (2012) 19 Bil rev.
[cdpc/docs 2012/cdpc (2012) 19 Rev.]

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

Questionnaire

Protocol to Criminal Law Convention on Corruption: Non-profit sectors

Protocole à la Convention pénale sur la corruption : secteurs à but non lucratif

Feasibility / faisabilité

Replies / Réponses

Document prepared by the CDPC Secretariat
Directorate General I – Human Rights and Rule of Law

Document établi par le Secrétariat du CDPC
Direction Générale I - Droits de l'homme et Etat de droit

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

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

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

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

* * *

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

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

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

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

AUSTRIA / AUTRICHE

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

The Austrian criminal law provisions against private (business) sector corruption, which are in line with Articles 7 and 8 of the Convention, are also applicable on the private non-profit sector.

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

See the first answer; since there are no legal lacunae, there are no plans to address them.

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

No.

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

-

AZERBAIJAN / AZERBAIDJAN

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

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

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

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

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

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

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

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

BELARUS / BELARUS

1. The Criminal Code of the Republic of Belarus contains all necessary provisions concerning criminalization of corruption (Art. 424 (abuse of power or official position), Art. 430 (bribe taking), Art. 431 (bribe giving), Art. 432 (mediation in brabery), Art. 252 (commercial bribing), Art. 253 (bribing of participants and organizers of professional sport competitions and entertainment commercial contest), etc.). The definition of "public official" in CC covers public officials both in public and private sectors. Moreover, the term "public official" in CC also covers persons authorized to perform legal significant actions (e.g. notary, etc.).

2. At present there is not any visible necessity to make any amendments to the Belarusian criminal legislation taking into consideration the fact that CC contains all necessary provisions on corruption crimes.

3. The information on scientific researches held in Belarus in respect of corruption in sport is not available.

4. It should be noted that there is the difference between corruption in sport and doping in sport: doping in sport is often not connected with abuse of power by sport managers or public officials. Such actions are closely connected with professional activity of coaches, and this activity is not carried out by using official power.

BELGIUM / BELGIQUE

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

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

- Art.504bis.

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

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

- 504ter

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

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

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

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

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

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

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

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

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

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

BOSNIA AND HERZEGOVINA / BOSNIE ET HERZEGOVINE

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

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

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

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

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

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

No available data on such kind of study.

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

There are no specific legal difficulties that have been identified.

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

CYPRUS / CHYPRE

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

Legal criminal provisions on bribery in sports essentially cover all aspects of corrupt practices under the Cyprus Sports Organization Law (Law 41/1969, article 24).

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

The Cyprus Sports Organization Law is currently under revision to be amended. In this context, its criminal provisions regarding corrupt practices in sports may be strengthened and/or revised.

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

No.

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

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ESTONIA / ESTONIE

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

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

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

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

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

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

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

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

FINLAND / FINLANDE

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

In Finland, bribery in the private sector expressly refers to bribery in business. The objectives are different compared with the public sector. The objective of protection in the private sector is healthy competition, that is, the financial benefit of those engaged in business. According to various country evaluations by the mechanisms of the international conventions against corruption the legislation against corruption in Finland covers most of the cases in public and private sector situations.

In sports, there have been few cases of match-fixing (mainly football) taken to court procedure in last few years in Finland. It has turned out that in higher-level various organisations where the whole work of the organisation is seen mainly business-based or/and professional the private sector legislation of bribery covers these situations according to the court praxis. Another question is a situation where lower-level organisations act more hobby-based and not like business-oriented. We do not have court praxis on this and it is possible that our legislation does not cover these situations. It has turned out lately that also these lower-level matches are a target for betting or gambling often by foreign actors.

When it comes to humanitarian aid, it can be stated that present regulation and lower-level guidance is quite satisfactory. In public procurement and development aid we have been recommended by OECD to take black lists of international organisations in use and it would need perhaps adjusting/amendment of present legislation.
In politics we have a need for a new legislation on trading in influence and also for regulations on lobbying and use of lobbying-registers for members of Parliament. In municipal level politics there is a need for an obligation to report allegations of bribery to law-enforcement officials, general reporting of connections to business and clearer disqualification rules in local decision-making organisations.

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

There are plans to take trading in influence into Criminal Code as soon as possible. Also other questions have been discussed but there are not yet any concrete plans for other questions mentioned in point 1.

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

Research on these topics is quite minimal. In sports there is one doctoral thesis in process. There is one research made on the gambling market in Finland this year by Turku School of Economics. Last year the new Government of Finland made an action programme where it is mentioned that risk-sectors of corruption should be mapped out. It will be done possibly next year and it has been discussed that sports could be taken there as one of the risk-sectors.

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

There are some difficulties in trading in influence with clear wording and simultaneously drawing the lines between appropriate and inappropriate actions. More than legal difficulties in criminalising these there is a need for awareness raising in these questions and then a need for positive and active implementation of international best practices.

FRANCE

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

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

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

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

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

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

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

Rien à signaler

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

Sans objet

GEORGIA / GEORGIE

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

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

Version anglaise:

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

1. Promising, offering, giving or rendering money, securities, other property of render property service or/and other illegitimate benefits directly or indirectly to a person who holds managerial, representative or other special position or works in a commercial or other type of organization, in order to ensure that such person performs or abstains to perform any activity in the abuse of his official capacity, for the interest of the briber or a third person, is punished by fine or restriction of liberty up to two years and/or deprivation of liberty up to three years, by deprivation of the right to occupy a position or pursue a particular activity for the term not extending three years or without it.
2. (--------)
3. Request or receipt of offering, promising or giving, directly or indirectly, for the interest of himself/herself or other person, of money, securities, property or any undue advantage or rendering property service by a person who exercises managerial, representative or other special authority in a commercial or other type of organization or works in such organization, in order that person to act or refrain from acting in breach of his/her duties, for the interest of the bribe giver or other person, shall be punished by restriction of liberty up to three years and/or deprivation of liberty from two to four years, by deprivation of the right to occupy a position or pursue a particular activity up to three years term."

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

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

Non

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

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GERMANY / ALLEMAGNE

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

In Germany, criminal law tackles the issue of corruption from two angles.

In the public sector, the so-called criminal offences committed by officials, i.e. active bribery and granting a benefit, criminalise acts directed against the fairness of the public service and the general public's confidence in this fairness.

The criminal offences of passive and active bribery (sections 332 and 334 CC) will have been committed if a benefit is granted in return for the performance of a specific official act which violates the duties of the public official involved.

However, for the offences of acceptance of a benefit and granting a benefit (sections 331 and 333 CC) to be established, it is not necessary for a specific official act to be obtained or for the public official concerned to have been made to act in breach of his duties. If a public official demands, accepts or allows himself to be promised a benefit in return not for a specific official act, but for the performance of his official duties, the offence is already deemed to have been committed.

The offences of passive bribery and acceptance of a benefit can only be committed by a public official (section 11 (1) no. 2 CC) or by a "person entrusted with special public service functions" (section 11 (1) no. 4 of the Criminal Code). Judges and arbitrators in arbitration proceedings can also be perpetrators of such offences.

In the context of sports events, such criminal offences can cover, for example, the bribery of public officials in the awarding of a contract (for example for building a stadium or other services). The invitation to a sports event must also be regarded as a benefit, the acceptance of which is only permitted under certain circumstances.

In the private sector, the criminalisation of active and passive bribery in commercial practice (section 299 CC) protects free competition. Pursuant to this provision, any person who grants a benefit, such as a bribe, to an employee or an agent of a business in return for being accorded an unfair preference in the competition, for example in the awarding of a contract, incurs criminal liability. The term "commercial practice" does not presuppose the intention of making a profit. Section 299 also covers non-profit, social or cultural institutions and thus also businesses owned by trade unions or political parties as well as public enterprises, as long as they carry out economic activities.

However, the above-mentioned provisions do not cover conducts in the area of sports by which benefits are granted to referees or players for the purpose of game manipulation, because the judges and players are not public officials and/or the bribery does not take place in the sphere of commercial transactions.

However, such conduct mostly occurs in connection with sports betting and is thus covered by the elements of the offence of fraud (section 263 CC) and/or accessoryship to fraud.

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

There are no plans to extend the criminal provisions on corruption to include “corrupt” acts by specific groups of persons (for example sports referees, sportspeople, trade union members, journalists), among other reasons in order to avoid over-criminalisation. Instead, it should again be pointed out that corrupt acts committed in these areas are already punishable as fraud or criminal breach of trust under the currently applicable provisions.

Insofar as the criminal offences of sections 299, 300 and 331-337 do not apply, corrupt acts outside the sphere of commercial transactions may also fall under section 263 CC, which is not limited to a specific circle of offenders. According to court rulings, the financial loss necessary for the offence of fraud to be established also covers the concrete danger of a future loss. Fraud in respect of sporting bets, in which a person placing a bet influences the subject of the betting contract (e.g. the result of a sports fixture) in his favour and conceals this fact when concluding the betting contract, is also covered by the offence of fraud under section 263 CC.

Corrupt conduct may also be covered by section 266 CC (breach of trust) or sections 253 and 255 CC (blackmail). Both offences are not restricted to a specific circle of offenders and, as in the case of fraud, the definitional element "financial loss” also covers the concrete danger of a future loss.

There is thus no need for legislative action.

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

We are currently not aware of any relevant studies.

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

There are no such legal difficulties in Germany (cf. reply to questions 1 and 2).

GREECE / GRECE

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

To the extent of our knowledge, there are not any corrupt practices - in the context with which the term is used by CoE - that would not fall in the ambit of the existing criminal provisions on bribery, fraud bribery in order to temper with the outcome of a match. Besides the general provisions of the Greek Criminal Code, article 132 of Law 2725/1999 as amended by Law 4049/2012 (Government Gazette A' 35/23th of February 2012), criminalises "any undue intervention with the intent to influence the course, form or outcome of any contest of individual or team sport" through, amongst other manners, "offering or accepting gifts of other benefits or any other award or the promise thereof" to any person and in particular to "an athlete, coach, referee, executive of other individual in any way associated to the athlete, the referee, the league, the AAT or TAA (administrative authorities regulating and overseeing professional sport events)". Sentences range from imprisonment for 1 to 10 years and fines from 100.000 € to 1.000.000 €.

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

Such practices are explicitly criminalized by the aforementioned provision of art. 132 L. 2725/1999.

Recently, a criminal organization which used to fix football games in order to profit from the respective legal betting conducted via Organization of Football Prognostics, was disorganized. According to conclusions drawn from this operation, Law 2725/1999 has been amended so that any lacunae or investigation difficulties to be dealt with.

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

Transparency International Greece has dealt with corruption in sports. The president of the aforementioned NGO has published in 9th of September 2011 an article to the newspaper Kathimerini named "Football and corruption" stating that the main problem of the corrupt practices in football is the lack of any internal control mechanism. The football world - in Greece as in other countries - is an organization that is "self-regulated". FIFA is supposed to be controlled by the football federations of 208 countries and the Greek Football Federation (EPO) from the football clubs. This is precisely the paradox: the controller (national federations) are economically dependent to the controlled (FIFA). In essence, there is no independent authority, no shareholder within the football domain able to exercise effective control.

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

Regarding sports - especially football - it is common view that it is difficult to prove the correlation of illegal betting and the predetermination of results in sporting competitions by agents, referees and athletes, or the money laundering through the players' transcriptions and the corrupt practices that are used. Yet, these difficulties regard mainly prosecution of such practices and substantiation of charges, and not the criminalization itself. In terms of substantive law, we are not aware of any open issues regarding the criminalization of match-fixing.

IRELAND / IRLANDE

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

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

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

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

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

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

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

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

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

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

ITALY / ITALIE

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

In Italy corruption in non-profit sector in general is not directly covered by Criminal Law provisions on bribery but can be punished trough other Criminal Law provisions such as those on fraud, embezzlement or false accounting. Against this background, the manipulation of sport results ("match- fixing") is specifically incriminated since 1989 through the Law 13th December 1989, n. 401 (see annex in the French version) which punishes (with imprisonment up to 1 year and a pecuniary sanction) any sort of manipulation of results in sport competitions, also providing for aggravating circumstances and accessory sanctions.

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

Also due to the incoming elections in Italy, we're not aware of any plan to go further the legal framework already described.

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

We are not informed of any specific study in this field.

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

The Italian experience seems to have worked quite well; since the entry into force of the Law in 1990, not less than 225 final sentences have been pronounced with reference to art. 1 of the Law (incriminating frauds in sport competitions).
If this is true at the internal level, some recent cases of investigations which also present a transnational dimension could incite to look deeper into the aspects of international cooperation in criminal matters to check if any specific instrument in this field, beyond the already existing legal instruments of a general nature, could be considered as needed or desirable.

LATVIA / LETTONIE

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

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

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

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

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

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

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

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

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

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In Latvia existing legal framework cover corrupt practices also in non-profit organisations through the provisions applicable in private sector. Namely bribery offences in these sectors are criminalised by the Criminal Law Article 198 and Article 199 (Article 198 Unauthorised Receipt of Benefits, Article 199 Commercial Bribery).

There have not been any studies on corruption phenomena in Latvia related to non-profit organisations so far. Taking into account large amounts of money allocated from the state budget to sport organisations, the State Audit Office and the Corruption Prevention and Combating Bureau pays attention to spending and reporting about use of this money to avoid possible corruption risks. In 2009 the State Audit Office carried out revision on how public funds allocated for sports activities are administrated. It is not intended to introduce new provisions in order to criminalise corrupt practices in separate sectors of non-profit sector or different types of organisation operating in this

sector. Discussion has been raised in relation to establishing more strict control mechanisms in administration of state funds allocated to sport.

LITHUANIA / LITUANIE

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

In Lithuania, all corrupt practices theoretically are to be covered by existing legal regulation. It is important to notice that corruption in the private sector in Lithuania is not narrowed to profit-seeking activities as it is recommended to do in Criminal Law Convention on Corruption (1999 ETS No. 173): “First of all, Article 7 restricts the scope of private bribery to the domain of "business activity", thus deliberately excluding any non-profit oriented activities carried out by persons or organizations, e.g. by associations or other NGO's. This choice was made to focus on the most vulnerable sector, i.e. the business sector.“ Lithuania chose to broaden private sector by not indicating that the necessary feature of the private sector’s bribery should be profit-seeking. Such an alternative is possible also according to the said Explanatory Report: “nothing would prevent a signatory State from implementing this provision without the restriction to "in the course of business activities". However, theoretical covering has not much in common with the practical incrimination of bribery. For instance, there was not a single case in which anyone would have been sentenced for sports bribery in Lithuania.

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

Currently there aren’t any plans and intentions to draft or submit to the legislator any legislation providing responsibility for bribery in non-profit sectors.

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

Yes, there are certain studies (scientific articles) on such phenomena:
Gutauskas, A. Korupcinio pobūdžio nusikalstamų veikų baudžiamojo teisinio vertinimo aspektai (Engl. Corruption Related Offences and the Aspect‘s of its Criminal Legal Evaluation). Current Issues of Business and Law, 2008, 2, 23–33. http://s3.amazonaws.com/zanran_storage/www.ttvam.lt/ContentPages/2471085240.pdf

Burda, R. Korupcija privačiame sektoriuje: apibrėžties ir teisinio reguliavimo galimybės (Engl. Corruption in the private sector: definition and regulatory options). Current Issues of Business and Law, 2012 7(1), 201–220. ISSN 1822-9530 http://journals.indexcopernicus.com/abstracted.php?level=5&icid=1003099

Zaksaitė S. Korupcijos privačiame sektoriuje kriminalizavimo problemos. (Engl. Corruption in Private Sector: Issues On Criminalization). Current Issues of Business and Law. 2012 7 (2), ISSN 1822-9530 (upcoming issue).

Zaksaitė S. Korupcijos privačiame sektoriuje kriminalizavimo, kvalifikavimo ir įrodinėjimo problemos: kai kurių praktinių pavyzdžių analizė. (Engl. Criminalization, qualification and prooving of corruption in the private sector: analysis of some practical cases.) ISSN 2029-4239 (online). Teisės apžvalga. Law review. No 2 (9) 2012. (upcoming issue)

Zaksaitė S. Sukčiavimo sporto srityje samprata ir kriminalizavimo ypatybės (Engl. Concept of cheating in sports and its criminalization peculiarities). Mokslo darbai. Teisė 79 2011 ISSN 1392-1274, 157-171. http://www.leidykla.eu/en/journals/law/law-2011-vol-79/zaksaite-s-concept-of-cheating-in-sport-and-its-criminalization-peculiarities/

Zaksaitė S. Cheating in sport: Lithuanian case for legal regulation. US-China Law Review. Volume 7, Number 2, February 2010. ISSN 1548-6605, 56-64. http://www.davidpublishing.com/davidpublishing/journals/J8/falv2011/lawreview2011/388.html#

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

To our view, there are two main problems in criminalizing these phenomena: 1) the lack of clarity concerning concepts of “person equated to public official”, “public administration authorities” and “public services”; 2) the lack of clarity concerning the concept of “big harm”.

4.1 The attributes of “person equated to public official”, “public administration authorities” and “public services” are necessary in order to incriminate corpus delicti of active or passive bribery and other corruption-related crimes (Abuse of position, Trading of influence and Negligent failure to perform duties).

For instance, corpus delicti of bribery requires a specific subject. The subject of bribery shall be state person or person who is equated to state person. The subject of bribery could also be a private person (also, working in non-profit sector), however – this person must have the power of public administration or the right to allot public services. Such people as athletes usually do not execute administrative powers – they do not have subordinates, do not distribute financial resources, do not rule staff – therefore, stricto sensu they cannot be a subject of bribery. From another point of view, some top players have some (unofficial) authority that is similar to public administration. Also, the officials of sports federations always have public authorities; therefore, it is possible to incriminate corpus delicti of bribery in such cases where not only single athletes, but, for instance, the officials from federation are involved.

4.2 Another serious problem is related with the concept of “big harm”. This attribute is necessary in order to incriminate corpus delicti of the abuse of position which is, in principle, the most general corruption-related crime. However, there is no explicit interpretation what is to be regarded as “big harm”. It is complicated to imply this feature mostly because the harm might occur after relatively long period of time and sometimes it might not be clearly seen at all. It should also be pointed out that “big harm” (which might hardly be estimated) is a necessary feature in order to separate these crimes from the disciplinary or administrative offences.

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

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

Le 02.12.2011 le Parlement de la République de Moldova a adopté la Loi n° 245 (entrée en vigueur le 03.02.2012) qui a eu comme objectif la mise en oeuvre des recommandations du troisième cycle du GRECO sur les incriminations de la corruption et d'aligner les dispositions légales aux exigences de la Convention pénale sur la corruption et son Protocole additionnel.

Malgré ces derniers amendements au Code Pénal dans l'activité quotidienne on a eu connaissance de diverses manifestations illégales qui ne tombent pas sous l'incidence de ces prévisions.

Ainsi on s'est rendu compte que les différentes catégories d'arbitres, les agents des sportifs, les organisateurs de toutes sortes de compétions et paris ne peuvent pas être sujets des infractions de corruption dans le secteur privé car ils ne dirigent pas et ils ne travaillent pas pour une entité quelconque du secteur privé.

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

Tenant compte de ces faits ainsi que de la Recommandation du CM REC (2011)10 sur la promotion de l'intégrité du sport pour lutter contre la manipulation des résultats notamment les matchs arrangés, le Centre National Anticorruption en commun avec le Parquet Anticorruption, les représentants des sociétés sportives et de la société civile ont élaboré un projet de loi sur la modification du Code Pénal. Ce projet propose de compléter le Code Pénal par 2 articles intitulés « Manipulation d'un événement » et « Paris arrangés ». Les dispositions de ces articles incriminent les faits d'encourager, influencer un participant à un événement sportif ou à un événement suivi de paris pour qu'il accomplisse des actions qui pourraient vicier les résultats de cet événement dans le but d'obtenir des biens, services, privilèges ou avantage sous n'importe quelle forme. Le fait d'arranger des paris illégaux, d'informer et convaincre des personnes de participer aux paris truqués est aussi érigé en infraction. On complète aussi la liste des sujets de ces infractions par les entraîneurs, l'agent du sportif, le propriétaire du club sportif, ainsi que tout participant à un événement sportif ou événement sous pari.

Ce projet de Loi a été examiné en première lecture par Le Parlement le 6 décembre 2012.
Dès l'adoption, le cas échéant, on pourrait vous envoyer le texte de cette Loi.

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

Actuellement on ne mène pas de recherches, d'études sur le problème soulevé par vous.

Au mois de décembre une étude consacrée au sujet des infractions de corruption dans le secteur public et privé a été publiée, son auteur est le procureur Mr. Ruslan Popov.

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

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NETHERLANDS / PAYS-BAS

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

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

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

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

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

See answer 1

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

See answer 1.

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

See answer 1.

POLAND / POLOGNE

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

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

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

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

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

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

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

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

No major difficulties have been perceived.

PORTUGAL

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

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

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

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

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

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

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

No

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

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

SWEDEN / SUEDE

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

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

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

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

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

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

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

The amendments contain two new offences: trading in influence and negligent financing of bribery. The trading in influence statute criminalizes the receipt of an undue advantage for the purpose of

influencing a third person (e.g. a foreign public official) in connection with the exercise of public authority or a public procurement. The provision on negligent financing of bribery is not relevant for the purposes covered by the present questionnaire.

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

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

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

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

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

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

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

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

SWITZERLAND / SUISSE

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

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

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

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

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

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

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

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

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

TURKEY / TURQUIE

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

Turkey is a party to many of the instruments concluded on the international platform on corruption. In this concept, article 252 regulating the bribery offence in the Turkish Criminal Code No. 5237 has been amended by taking into consideration the recommendations to our country within the scope of GRECO Third Evaluation Round Theme I.

The enacted provision of article 252 of the Code No. 5237 regulates:

"(1) Any person who secures, directly or through other persons, an undue advantage to a public official or another person indicated by the public official to perform or not to perform a task with regard to his/her duty shall be sentenced to a penalty of imprisonment for a term of four years to twelve years.

(2) Any public official who secures, directly or through other persons, an undue advantage to him/herself or another person indicated by the public official to perform or not to perform a task with regard to his/her duty shall be sentenced to the same penalty stipulated by the paragraph 1.

(3) Where the parties agree upon a bribe, they shall be sentenced as if the offence was completed.

(4) In the case where the public official requests a bribe but it is not accepted by the person, or the person offers or promises an undue advantage to the public official but it is not accepted by the public official, the penalty to be imposed on the perpetrator according to the provisions of paragraphs 1 and 2 shall be reduced by half.

(5) Any person who mediates the offer or conveys the request to the other party, closing the bribery agreement or providing the bribe shall be punished as accomplice, irrespective of being a public official.

(6) Any third person who is provided with the benefit or authorised person of a legal person who accepts the benefit shall be punished as accomplice, irrespective of being a public official.

(7) Where a person who receives or requests a bribe or agrees to such is a person in a judicial capacity, an arbitrator, an expert witness, a public notary or a professional financial auditor, the penalty to be imposed shall be increased by one-third to one-half.

(8) The provisions of the present article shall also apply where, irrespective of being a public official, an undue advantage is obtained by, offered or promised directly or through intermediaries to the persons acting on behalf of:

a) occupational organisation in the character of public entity,

b) corporations established in association of public institutions or organisations or occupational organisations in the character of public entity,

c) foundations acting within the body of public institutions or organisations or occupational organisations in the character of public entity,

d) public benefit associations,

e) cooperatives,

f) open joint stock companies,

to perform or not to perform a task with regard to their duties; an undue advantage is requested or accepted by these persons; these acts are mediated; an undue advantage is provided for another through this relation.

(9) The provisions of the present article shall also apply where an undue advantage is obtained by, offered or promised directly or through intermediaries to;

a) public officials elected or appointed in a foreign country,

b) judges, jury members or other officials acting in international or supranational or foreign state courts,

c) members of international or supranational parliament,

d) persons performing public activities for a foreign country, including public institutions or public corporations,

e) citizens or foreign arbitrators appointed within the framework of arbitration procedure applied for solution of a legal dispute,

f) officials or representatives of international or supranational organisations established based on an international agreement,

to perform or not to perform a task with regard to their duties or to obtain or preserve a work or an unjust benefit due to international commercial transactions, or where an undue advantage requested or accepted by these persons.

(10) Where the offence of bribery that falls within the scope of paragraph 9 is committed, although by an alien abroad, with regard to a dispute to which;

a) Turkey,

b) a public institution in Turkey,

c) a private law legal person established according to Turkish laws,

d) a Turkish citizen,

is a party, or to perform or not to perform a transaction concerning these institutions or persons, ex officio investigation and prosecution are initiated against the persons who receive, request, accept the offer or promise of a bribe, mediate these, obtain an undue advantage for him/herself in connection with bribery relationship, if they are present in Turkey.”

According to the mentioned provision, although, virtually, the person requesting or is requested to receive a bribe should be a public official for constitution of the bribery offence, within the framework of compliance with the provisions of international conventions, under paragraphs 8 and 9, term for having the person who requests or is requested to receive a bribe to be a public official is not stipulated for constitution of the bribery offence.

In this case, according to paragraph 8, where an undue advantage is obtained by, offered or promised directly or through intermediaries to the persons acting on behalf of the institutions and organisations enumerated in the paragraph to perform or not to perform a task with regard to their duties, they may be investigated or prosecuted for the bribery offence irrespective of being a public official.

Similarly, paragraph 9 allows for investigation or prosecution of public officials listed under the paragraph who obtain an undue advantage or who are offered or promised an undue advantage directly or through intermediaries to perform or not to perform a task with regard to their duties or to obtain or preserve a work or an unjust benefit due to international commercial transactions, irrespective of being public official.

On the other hand, paragraph 1 of article 11 of the Law No. 6222 on the Prevention of Violence and Disorder in Sports dated 31/03/2011 stipulates;

“(1) Those persons who provide financial profit or other advantages to another person in order to influence a specific sports competition shall be sentenced to a penalty of imprisonment for a term of one to three years and a judicial fine up to twenty thousand days. The person to whom the benefit is provided shall also be penalised as an accomplice to this offence. In the case where an agreement is reached for provision of financial profit or other advantages, the penalty shall be imposed as if the offence is completed.”

Paragraph 5 of the same article stipulates, “In the case where the offence is committed by furnishing or promising incentive pay for the team to be successful in a competition, the penalty to be imposed as per the provisions of the present article shall be reduced by half.”

Pursuant to article 11 of the Law No. 6222, request or offer of an undue advantage in order to influence the outcome of a sports event constitutes the offence of “match-fixing”; commission of this offence by furnishing or promising incentive pay for the team to be successful in a competition constitutes the offence of “incentive”, and it is not required for one of the parties to be a public official. In other words, bribery offence is distinctively regulated in our sports law under the names of match-fixing and incentive.

Unions and political parties in our country do not carry the title of public legal person, but they are in the character of private law legal persons. Unions and political parties are not listed, under paragraph 8 and 9 of article 252 of the Turkish Criminal Code, among the exceptional institutions officials of which could be accused of the bribery offence even if they do not carry the title of public official.

On the other hand, the revised Union Law has been enacted in Turkey on 18/10/2012 according to the criteria stipulated by the EU and the ILO Convention. In article 28 of the Union Law subtitled supervision and transparency, supervision of unions by state institutions has been lifted and supervision power has been vested on independent supervisors.

Under article 78/1-d of the same Law, acts removing supervision and transparency have been stipulated as offence. Accordingly;

It is forbidden for Labour and Employer Unions to receive aid and donation from public institutions and organisations, craftsman and little artisan organisations and other public professional organisations; for labour organisations from employers and employer organisations established according to this Law and other laws; for employer organisations from labourers and labour organisations established according to this Law and other laws.

It has been permitted for labour and employer unions to receive aid and donation from persons, institutions and organisations abroad with a prior notification to the Ministry. Receiving aids and donations in cash through banks has become obligatory.

It has been adopted that in the case of violation of these rules and prohibitions, responsible executives of the institutions will be penalised with a fine for one thousand five hundred Turkish liras, and in the case of repetition of the act, with an additional fine at the amount of donation.

Regarding the political parties; although a separate bribery offence is not regulated under the Law on Political Parties, in order to penalise corrupt practices, punitive sanctions which are regulated under the Union Law and which are not in violation of the Law on Political Parties have been made applicable to the political parties and their executives by referral to the Union Law. In this context, under article 32 of the Union Law No. 5253 adopted on 04/11/2004, it was regulated that offence of "misuse of trust" regulated under article 155 of the Turkish Criminal Code would be constituted by the persons who illegally dispose the assets of the union. Because of the reference made to the Union Law in the Law on Political Parties, article 155 of the Turkish Criminal Code is also applicable to the political parties and their executives.

When the above legal framework is taken into consideration, corrupt practices in the areas of sports, humanitarian aid, politics and unions are sanctioned, may be not under the name of bribery but, under the offence types such as fraud, misuse of trust, influence peddling, and etc.

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

Pre-determined strategies containing measures and activities are important for increasing transparency and ensuring success in the fight against corruption. This way, it becomes possible to determine primary areas in the fight against corruption and to reach to a conclusion in a determinate and effective way. Besides, fight against corruption is not a periodical effort, but a complement of activities requiring continuance according to the developments in economic and social life. In this framework, by a Prime Ministerial Circular in our country and by participation of all the relevant sectors, "Strategy for Increasing the Transparency and Strengthening the Fight against Corruption" has been developed. In preparation of the Strategy for Increasing the Transparency and Strengthening the Fight against Corruption (Strategy), Turkish National Program for the Adoption of the European Union Acquis and evaluations of various international institutions regarding our country have been utilised. Basic components of the Strategy which is to be implemented between 2010 and 2014 are collected under three main titles as; Preventive Measures, Implementation of Sanctions and Increasing the Social Awareness.

Goals planned to be carried out within this scope can be lined as follows:

- *Improvement of implementations concerning clarity and transparency and activating supervision in financing of political parties and election campaigns*

- *Completion of the works regarding political ethics*

- *Completion of enactment process of the Court of Accounts Law Proposal*

- *Revision of the provisions in the Law No. 3628 on Asset Declaration, Fight against Bribery and Corruption regarding asset declaration and other implementations*

- *Revision of effectiveness of legal regulations and implementation regarding the works that cannot be done by former public officials*

- *Completion of the works regarding state secrets and commercial secrets*

- *Increasing transparency and accountability of local administrations in the processes of works such as construction, permit, etc.*

- *Revision of effectiveness of supervisory mechanisms of local administrations on their subsidiaries*

- *Determination of ethical principles and observation mechanisms for the ones elected at local administrations*

- *Strengthening the capacity of supervisory units*

- *Based on supervision reports, determination of the risk areas open to corruption, and taking necessary measures*

- *Determination of separate ethical principles for each profession group within public administrations by the guidance of Board of Ethics for Public Officials, and prevention of conflicts of interest*

- *Increasing transparency and preventing corruption in private sector institutions*

- *Increasing transparency and preventing corruption in non-governmental organisations*

- *Determination of the risk areas by utilising database established regarding outcomes of proceedings concerning corruption offences and public officials who received disciplinary punishment in the State Personnel Administration*

In order to realise these goals, the plans for 2013-2014 are as follows:

- There is still a draft law regarding GRECO Third Evaluation Round Theme II recommendations for improvement of implementations concerning clarity and transparency and activating supervision in the financing of political parties and election campaigns awaiting for enactment in our country.

- By revising the provisions regarding asset declaration and other implementations in the Law No. 3628 on Asset Declaration, Fight against Bribery and Corruption, studies are underway for;

having central executives, provincial heads and district *(only for the districts within the borders of metropolitan municipality)* heads of political parties and executive/supervision board members and the responsible directors of the visual and auditory media organisations to make asset declarations;

organisation of asset declaration forms to enable comparison;

receiving asset declaration forms through electronic environment;

whether to include offences such as rigging performance of execution, influence peddling, laundering proceeds of crime in the scope of the Law No. 3628;

increasing efficiency in control and comparison of the asset declarations of the Ethical Boards.

- Determining whether a standardisation could be provided in the authorisation system by reviewing laws of Institutions and Organisations (such as Higher Education Council, soldiers, lawyers) stipulating special investigation and permission systems against their personnel for the purpose of reviewing permission system in the investigations against public officials, and evaluation of the administrative and judicial jurisdiction in the investigations carried out according to the Law No. 4483 are planned.

- Determining whether there should be a rewarding system to ensure reveal of corrupt practices for the purpose of establishing regulations concerning prevention of informants of corrupt practices in the public institutions and organisations and private sector and non-governmental organisations to the competent authorities; whether there is a need for legislation/regulation instructing to show necessary sensitivity on prevention of public officials informing corrupt practices; performing evaluations regarding paid leave or assignment to another unit to prevent the public official informing the corrupt practices at the investigation stage are planned.

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

First of all, as a result of the studies carried out by the working group established under the responsibility of the Prime Ministry Public Relations Department to increase social sensitivity on such practices/phenomena in our country, it has been planned to draw a brochure by the public institutions and organisations containing information on the rights vested on the citizens by laws and administrative regulations for the citizens' applications and processes before public institutions, and to publish this on internet sites and at visible sites in their institutions.

It has been planned by the Department of Turkish Statistical Institute to prepare "Draft Questions for Questionnaire on Perception of Corruption" to ensure regular implementations of corruption questionnaires aimed to determine how the corruption is perceived in the society.

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

The major difficulty in criminalising these practices/phenomena lies under evidencing the acts constituting offence. To be able to overcome this difficulty, various studies have been carried out for protection of informants in our country. Within the scope of the "Strategy for Increasing the

Transparency and Strengthening the Fight against Corruption (2010-2014)" numbered 2010/56 that was adopted by the Council of Ministers on 01/02/2010 and the "Action Plan for Increasing the Transparency and Strengthening the Fight against Corruption" drawn in line with this Strategy, it has been aimed for "Revision of the provisions in the Law No. 3628 on Asset Declaration, Fight against Bribery and Corruption regarding asset declaration and other implementations" and "establishing regulations concerning prevention of informants of corrupt practices in the public institutions and organisations and private sector and non-governmental organisations to the competent authorities".

In this framework, it has been deemed necessary to amend the Law No. 3628 and several relevant laws to bring obligation of asset declaration to the persons in certain offices, and also to amend several laws regarding prevention of informants of corrupt practices in the public institutions and organisations and private sector and non-governmental organisations to the competent authorities.

In this context, several measures are foreseen and legal amendments are instructed thereto such as provisional assignment of the informant public official to other institutions by his/her consent, abandoning the practice of evaluation of the informant public official by his/her chief, approaching and extending the awarding system for ensuring further reveal of corrupt practices as a whole, measure of issuance of Prime Ministry Circular so as to encourage public institutions to show necessary sensitivity to prevention of public officials revealing corrupt practices.

One of the legal difficulties discerned in criminalising corrupt practices/phenomena in non-profit sectors is that, as well as criminal sanction-based differences in cases where corrupt act is not considered as bribery, some methods such as intercepting, detection, recording of telecommunication, technical tracking regulated by the Criminal Procedure Code in obtaining evidence only for certain offences cannot be utilised for the other corrupt practices in non-profit sectors.

UKRAINE

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

In accordance with the national legislation of Ukraine, including the Law of Ukraine "On Prevention and Combating Corruption" the subjects for corruption offenses are those who permanently or temporarily hold positions related to performing organizational-administrative or administrative and economic functions or persons specifically authorized to perform such duties in private law legal entities regardless of its form of incorporation (paragraph 3 of Part 1 of Article 4 of the Law), as well as officials of legal entities and physical persons - if illegal profit is received from them by the persons referred to in paragraphs1 and 2 of Part 1 of Article 4 of the Law or with the assistance of those persons by the others (paragraph 4 of Article 4 of the Law). So Ukrainian legislation covers the whole range of people who could potentially commit corruption offenses, including those people who work in the areas such as sports, humanitarian aid, trade union activities and others.

For violations set by Article 6 (Restrictions for abuse of official position) and Article 16 (Requirements for transparency of information) of the Law, and corruption offenses committed by persons mentioned above, including giving by them of illegal profit, it is stipulated administrative responsibility (Article 172-2 (Violation of restrictions as for abuse of official position), Article 172-3 (Offering or giving illegal profit), Article 212-3 (Violation of the right to information) of the Code of Ukraine on Administrative Offenses) and criminal responsibility (Chapter XVII (Criminal Offenses in the sphere of official and professional activities related to public services) of the Criminal Code of Ukraine). It should be noted that restriction on the combining main job with the instructor and the judicial practice in sport (Paragraph 1 of Part 1of Article 7 of the Law) is not applied towards magistracy and other subjects for corruption offenses, and the restriction for the work of close relatives is not applied to the persons of the mentioned category who work in the sphere of physical culture and sports (Paragraph 4 of Part 1 of Article 9 of the Law).

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

The Ministry of Interior of Ukraine has examined the issue as for concretization of corruptive offenses in each individual kind of sport. In particular, the Ministry has taken part in working out of the draft law of Ukraine "On Preventing and Counteracting achieving the fixed (contractual) results and other corruptive offenses in football," proposed by the people’s deputy of Ukraine, Mr.Kolesnichenko V.

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

No, we aren't.

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

During drafting the Additional Protocol to the Criminal Law Convention on Corruption it is necessary to pay special attention to the definition of terms that will be used for the purposes of this Protocol, as in paragraph a) of Article 1 of the Criminal Law Convention on Corruption the term "public official" is applied to the person who, in accordance with national legislation and criminal law of the Country, fulfils certain functions, while Article 7 (Public sector) of the UN Convention against Corruption regulates the public service.

There are also doubts about the appropriateness of referring the sphere of sports, especially professional sports, to nonprofit sector, as international and national sports organizations (federations), some individual professional sportsmen receive profits (income) from the sale of tickets, advertising, giving permissions for the use of symbols and logos, etc. In particular, the only source of funding for the International Olympic Committee, whose income in 2008 was 2.4 billion dollars, is the private sector, including television companies (selling the rights to broadcast the Olympic Games - 53% of income, sponsors - 34%, as well as ticket sales - 11% and licensing - 2%).

UNITED KINGDOM / ROYAUME-UNI

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

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

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

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

Not as regards the criminal law.

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

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

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

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