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**Convention on the Manipulation of Sports Competitions
– Macolin Convention (CETS n°215)**

Panorama



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Introduction



“Manipulation of sports competitions” means an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others”.

The present “Panorama” offers a synthetic overview of the Convention on the Manipulation of Sports Competitions (Macolin Convention), CETS n°215, which entered into force on 1 September 2019. It should help public to understand the importance of this only rule of international law on the subject to currently exist, and therefore the interest in States worldwide of signing and ratifying this treaty.

The emergence of manipulation of sports competitions has been documented since the beginning of the 21st century in numerous studies and working papers prepared by researchers, sports organisations, sports betting operators associations and international organisations. Main actors agree that greater commercialisation of sport and the extensive media coverage given to it have led to an increase in the economic stakes involved in achieving certain sports results. Despite major efforts by sports organisations to promote good governance, the sports movement is clearly not immune to corrupt practices. At the same time, the phenomenal growth of the sports business market and in addition, of the sports betting market due to technological improvements, has created a new environment in which anyone can have a personal and direct or indirect financial interest in the course or outcome of any given competition.

The manipulation of sports competitions is therefore a problem with a global dimension, taking various forms and which affect all countries and all sports. It poses a threat to the integrity to sport and its core values. It also exploits sport economic potentials, which can provide large rewards and low risk to criminals due to weak criminal penalties or sanctions. Linked to corruption, fraud and money laundering at the very least and involving organised crime, the manipulation of sports competitions poses a serious threat to the rule of law.

For those reasons, the fight against manipulation of sports competitions required a worldwide legal instrument seeking to contribute to greater national and international co-operation. This is from now on provided by the ground-breaking Macolin Convention.

Part I: The legal background of the Macolin Convention



The Council of Europe is the European continent's leading human rights organisation. It is based in Strasbourg (France). It comprises 47 member states, 27 of which are members of the EU.

The Council of Europe pioneered the European integration process. It was set up in 1949, in the wake of the Second World War, to ensure the political reconstruction of Europe based on a set of fundamental values, the loss of which had brought the continent to its knees.

Overview

The Strasbourg based Council of Europe upholds human rights and democracy through more than 250 international conventions. These are agreements which are legally binding upon member states once they have signed and ratified them. States' policies are regularly reviewed to ensure that they are in compliance with the conventions.

A number of separate bodies are responsible for the functioning of the Council of Europe. The most important ones are:

- The Committee of Ministers is the decision-making body and comprises the foreign ministers of all the member states. It decides the Organisation's policy and approves its budget and programme of activities;
- The Parliamentary Assembly is made up of elected representatives from the 47 national parliaments. It is a forum for debates and proposals concerning pan-European social and political affairs;
- The European Court of Human Rights allows since 1959 individuals, groups and governments to contest alleged breaches of the European Convention on Human Rights;

Council of Europe and Sport

A first Council of Europe reference instrument dealing with sport and its basic principles was adopted in 1992¹ followed by two others² in an effort to improve the integrity of sport and ensure that it was in a stronger position and better governed. In 2008, the Parliamentary Assembly³ noted that scandals involving illegal sports betting and manipulation of results had seriously damaged the image of sport and called for the introduction of mechanisms to reduce the risk of match-fixing, illegal sports betting or other forms of corruption.

The first resolution to deal specifically with the manipulation of sports results⁴ was adopted in 2010, calling upon Council of Europe member States to adopt effective policies and measures aimed at preventing and combating the manipulation of sports results in all sports. The Enlarged Partial Agreement on Sport (EPAS) carried out⁵ a feasibility study on the possibility of adopting a legal instrument on match-fixing, which

¹ Recommendation n°R(92)13rev on the revised European Sports Charter

² Recommendation Rec(2005)8 on the principles of good governance in sport and Recommendation CM/Rec(2010)9 on the revised Code of Sports Ethics

³ Resolution 1602(2008) on the need to preserve the European sport model

⁴ Resolution n° 1 on promotion of the integrity of sport against the manipulation of results, 18th Council of Europe Informal Conference of Ministers responsible for Sport (Baku, Azerbaijan on 22 September 2010)

⁵ Recommendation CM/Rec(2011)10 on the promotion of the integrity of sport to fight against the manipulation of results

concluded (Council of Europe Conference of Ministers responsible for Sport in Belgrade on 15 March 2012) that an international convention dealing with all preventive measures and sanctions aimed at suppressing the manipulation of sports competitions was the most appropriate option.

The genesis of the Macolin Convention

The Macolin Convention was prepared by an intergovernmental drafting group set up by EPAS. It was adopted by the Council of Europe Committee of Ministers at the 1205th meeting of Ministers' Deputies on 9 July 2014. The Macolin Convention was opened for signature on 18 September 2014, in Magglingen / Macolin (Switzerland). The ratifications by Italy (2019), Republic of Moldova (2019), Norway (2014), Portugal (2015), Switzerland (2019) and Ukraine (2018) have triggered the entry into force of the Convention on 1 September 2019.

The Macolin Convention details the specific nature of the financial crime stemming from competition manipulation. Through its specific approach it complements and facilitates the implementation of existing legislation adopted by other areas of the Council of Europe and by the United Nations, which do not specifically deal with cases involving sports manipulation and may involve practices that are not covered by existing instruments:

- a. Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5, hereinafter "Convention 5") and the protocols thereto;
- b. European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (1985, ETS No. 120);
- c. Anti-Doping Convention (1989, ETS No. 135);
- d. Criminal Law Convention on Corruption (2002, ETS No. 173);
- e. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2008, CETS No. 198);
- f. United Nations Convention against Transnational Organized Crime (2000) and the protocols thereto;
- g. United Nations Convention against Corruption (2003).

Part II: The scope of the Macolin Convention



The Macolin Convention is a ground-breaking legal instrument and the only rule of international law on the subject to currently exist. It seeks to protect the integrity of sport, while addressing the non-sporting criminal nature of the phenomenon itself.

Considering that existing general legislation does not cover this specificity of sport, the Macolin Convention provides guidance for adapting appropriate national regulations.

The core objective of the Macolin Convention seeks to address in a practical manner any potential threat to the integrity of sport as this increases the risk of the manipulation of sports competitions. In this respect, it responds to the need for a unique legal instrument establishing a robust framework for national and international co-operation in fighting this worldwide scourge and therefore invites also States which are not members of the Council of Europe to become parties to the Convention.

The Macolin Convention allows commonly agreed standards and principles to be set in order to prevent, detect and sanction the manipulation of sports competitions. It notably provides the first and now commonly used definition of the phenomenon⁶, which not only sanctions the act of manipulation but also the attempted manipulation.

It is clear that sports manipulations are not an isolated matter to be dealt with solely by the sport movement. While it can be by itself a type of corruption, it can as well cover other financial offences, such as money laundering or fraud, and potentially involving organised crime. In order to address efficiently the complexity of the problems, the Macolin Convention recommends the specific criminalisation of the manipulation of sports competitions.

Main principles and features

The Macolin Convention approaches the manipulation of sports competitions in a unique manner, engaging in one coordinated action all relevant public and private stakeholders, namely public authorities (including ministries, law enforcement agencies and prosecutors), the sport movement (notably organisations and federations) and sports betting operators.

Public authorities are encouraged to adopt the necessary legislative or other measures, including financial ones, to support any initiatives taken by other stakeholders, but also to identify the authorities responsible for implementing the legal framework created. The Convention ensures better co-operation between all stakeholders and therefore paves the way for a more systematic and comprehensive application of the measures adopted by them to jointly identify and prevent manipulation of sports competitions.

⁶ The Convention on the manipulation of sports competitions, article 3.1: "*Manipulation of sports competitions means an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others*".

States Parties have a wide margin of discretion when making policies in accordance with applicable law considering that States must nevertheless abide by the rules in force and, in particular, the relevant applicable international and/or European Union laws.

The Convention:

- is consequently compatible with all types of sports betting market organisation (prohibition, monopoly, market open to licensed operators or free market).
- ensures efficient enforcement systems by identifying acts and types of conduct which should be considered as offences and prosecuted. The international judicial and police co-operation is facilitated by making specific references to money laundering and to the liability of legal persons, which, depending on the Parties' applicable law, can lead to criminal, civil, disciplinary or administrative sanctions.
- Introduce the National Platform as an innovative mechanism to assure the coordination and the exchange of information between national stakeholders and various national systems;

The Explanatory Report prepared by the drafting group and transmitted to the Committee of Ministers of the Council of Europe might facilitate the understanding of the Convention's context and provisions.

The authoritative interpretation of the text of the Convention will be provided by the Macolin Convention Follow-up Committee, which can count on the work carried out by the Network of the National Platforms (Group of Copenhagen). The setting-up of the Follow-up Committee to monitor implementation of the Convention will assure an institutional base and political sustainability to the Macolin Process in countries. Only countries that ratify the Convention will have voting rights and be able to determine the scope of activities within the Convention, including standard setting (recommendations, guidelines, etc.).

Part III: Definition of Manipulation of Sports Competitions



The Macolin Convention defines (art.3) the manipulation of sports competitions as “*An intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others*”.

In accordance with the art.3 of the Convention, the manipulation of sports competitions is characterised by a number of core elements:

- the manipulation of the sports competitions involves an intentional arrangement, act or omission;
- these arrangements aim, successfully or unsuccessfully, to improperly alter the result or the course of a sports competition;
- the alteration of the course of the event occurs in order to remove all or part of the unpredictable nature of the competitions;
- these arrangements occur with a view to obtaining an undue advantage for oneself or for others;
- the definition of sports competition manipulation includes the intention of manipulation, even if that intention is unsuccessful and fails to obtain the undue advantage sought;
- the undue advantage always has a financial dimension either directly or as a consequence of the manipulation.

The “Typology of sports manipulations”⁷ completes the definition with a robust working basis, common references and practical tools allowing for better communication within and between National Platforms. It identifies what actions could be taken to address and respond to potential or emerging risks. It is a critical body of work, ensuring that all types of sports manipulation identify those acts which should be investigated, facilitating sport and judicial co-operation considering a broad range of criminal, administrative and disciplinary sanctions.

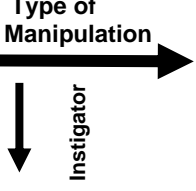
The types are structured using a two-factor classification method: the type of the manipulation which is then further classified by criteria related to who instigated the manipulation. The types of sports competition manipulation identified are:

1. Direct interference with the natural course of a sports competition by competition stakeholders;
2. Modification of an athlete’s identity or personal information in order to influence the natural course or outcome of a sports competition;
3. Influencing the nature course or outcome of an sports competition through the modification of: playing surfaces, equipment, athlete physiology, a sporting venue.

The above types of manipulation (1-3) can then be further classified by using the following criteria:

- A. Exploitation of governance
- B. Exploitation of power or influence
- C. External influencers
- D. Opportunistic

⁷ The “Typology Framework of Sports Manipulations” clarify the definition of sports manipulations based on practical experiences made by the National Platforms.

 <p>Type of Manipulation</p> <p>Instigator</p>	<p>Type 1: Direct interference in the natural course of a sporting event or competition i.e. deliberate manipulation by individual (s) involved in the event</p>	<p>Type 2: Modification of an athlete's identity / personal information</p>	<p>Type 3: Modification that is non-compliant with criminal laws or sport rules relating to: i. playing surfaces ii. equipment iii. athlete physiology iv. sporting venue</p>
	<p>Examples</p>	<p>Examples</p>	<p>Examples</p>
<p>A Exploitation of governance</p>	<p>Type 1A The owners of two sports clubs agree the outcome of a sports competition and instruct their teams to ensure that outcome is achieved.</p>	<p>Type 2A The Head of an international sports federation instructed a coach to include an athlete in their squad who was under the minimum age eligibility criteria for a competition.</p>	<p>Type 3A The CEO of a sports club instructs ground maintenance staff to tamper with a playing surface before a competition which they know will have a detrimental impact on the performance of the opposing team.</p>
<p>B Exploitation of power / influence:</p>	<p>Type 1B A sponsor of a club promises a new sponsorship contract to a player of a rival club if they "help" their team to lose their next game.</p>	<p>Type 2B A sports federation involved in an U17 international competition includes older, more experienced athletes in their squad an attempt to ensure that they win.</p>	<p>Type 3B Equipment is unfairly modified by club officials in order to gain an advantage for their own athletes</p>
<p>C External Influences.</p>	<p>Type 1C Athletes manipulate match outcomes at the direction of external match-fixers e.g. organised crime groups</p>	<p>Type 2C Athlete is given a false identity by an organised crime group. The false ID allows them to play sport in a country in which they would not ordinarily be allowed to compete</p>	<p>Type 3C An organised crime group forces groundsmen to switch off floodlights during in an evening event</p>
<p>D Opportunistic Action</p>	<p>Type 1D Two athletes playing each other agree the final outcome of an event before the start of play. i.e. they agree who will win the event</p>	<p>Type 2D An athlete knowingly modifies their personal data to enable them to compete in a competition classification for which they are not eligible.</p>	<p>Type 3D Athletes tamper with a ball during an event to make it perform differently to what their opponents expect</p>

In this framework, the classical distinction between “betting” or “non-betting” manipulation is not relevant in the context of the “Typology”. Betting is therefore not the purpose of manipulation but rather a method of gaining undue advantage and is a possible vehicle for obtaining the final undue advantage pursued through the manipulation. Consequently, the risk of manipulations related to betting could be present in all types identified and the betting on corrupted events is one aggravating factor which has to be properly considered by all stakeholders.

Part IV: National Platforms



The manipulation of sports competitions is a problem with a global dimension, taking various forms, thus requiring that all relevant actors accept to co-operate together and to coordinate their actions to reduce the attack on sport competitions of various manipulations.

According the Macolin Convention, Public authorities are expected to set up national strategies capable of (*inter alia*):

- Coordinating policies and actions of all public authorities that are relevant to the fight against the manipulation of sports competitions;
- Facilitating exchange of information between public and private entities through the establishment of mechanisms;
- Identifying, analyse and evaluate risks associated with the manipulation of sports competitions (article 5);
- Ensuring the transparency of funding of sports organisations supported by the State, via legislation and similar measures;
- Naming (or establishing) at least one authority who has the legal authority to implement sports betting regulation and to apply measures that have been put in place by the State to combat the manipulation of sports competitions in relation to sports betting (article 9);
- Ensuring, via legislation, that conflicts of interest and misuse of inside information is handled with regard to providing sports betting products;
- Compelling sports betting operators to report irregular or suspicious betting without delay to the betting regulatory authority or the national platform;
- Putting in place legislation and other measures as necessary to ensure the effective coordination of national stakeholders.

For those purposes, the Macolin Convention introduces the innovative concept of the National Platform (art.13)⁸, which has become the key instrument, established by public authorities, for addressing all aspects and all forms of sports competitions manipulations. This required structured mechanism needs clear procedures reflecting the good coordination between all the relevant public authorities and assuring the full cooperation of private stakeholders to produce optimal results and a balanced effort from all actors.

One main function given to the National Platforms by the Macolin Convention (Chapter III) calls on facilitating, at national and international levels and in accordance with its domestic law, the exchange of information between the relevant stakeholders (art. 12.1): regulatory authorities (art. 9.1.a and 9.1.c), sports betting operators (art. 10.3), sport organisations (art.7 and 21) and competition stakeholders (art.7.1.c).

⁸ As stated in the Macolin Convention (article 13), the fundamental role of the National Platform is to:

- serve as an information hub, collecting and disseminating relevant information to the relevant organisations and authorities
- receive, centralise and analyse information on irregular and suspicious bets placed on sports competitions and where appropriate issue alerts
- transmit information on possible infringements of laws or sports regulations to public authorities or to sports organisations and / or sports betting operators
- coordinate and co-operate with all organisations and relevant authorities at national and international levels, including other national platforms

With the National Platform sitting at the centre of information flows, it must have certain capabilities and the resources and expertise to perform these functions (receiving information, collecting and storing information, analysing and disseminating the information).

Part V: Relevance of the Convention



The Convention was drafted by countries and organisations from all over the world and was the subject of political decisions for the need for such an instrument. It provides a legal basis and framework for co-operation in this field between various public authorities and between public and private entities. It also provides structured mechanisms for the co-operation and for the coordination of actions.

Accession⁹

Accession is a two-step procedure: the first step is the signature, notably demonstrating a political willingness to be a Party to the Convention. The second step is to ratify the Convention, thus adopting its principles and engaging to follow its articles.

Although the **EU and EU member states** participated in the drafting of the Convention, only 3 EU member state has ratified the Convention (Greece, Italy, Portugal), while 19 others have signed it. This non ratification is not due to the lack of trust in the Convention, but rather a political deadlock: Within the European Union, when a convention has been deemed to have mixed competencies involving factors related to economy and judicial co-operation, a unanimous vote in favour of the convention is required by all 27 states in order to be able to ratify as one. In this case, a single Member state has given its veto for reasons not linked to the shared competence status, thus preventing the remaining 26 member states from ratifying the Convention. The European Commission has already expressed its strong support for the Convention. However, countries are welcome to sign the Convention in order to show their political support.

This situation does not affect any other country outside the European Union.

Other Council of Europe member states are not prevented from ratifying the Convention, and are invited to do so as soon as possible, in order to ensure the optimal adhesion to one of their Organisation's Conventions as well as securing a seat on the Follow up Committee. Moldova, Norway and Ukraine have already ratified. So far, only the following Council of Europe Member States (not EU member states) have not ratified the Convention: Andorra, Bosnia-Herzegovina, Liechtenstein, Monaco, San Marino, North Macedonia, Turkey

Those countries that are observers of the Council of Europe as well as those that participated in the Convention drafting group are invited to sign and ratify the Convention, thus formalising their support for Council of Europe instruments as well as, in the case of those from the drafting group, formalising their initial support and harvesting the fruit of their endeavours. Australia has already signed the Convention.

The Observatory countries and participants in the drafting group are: Belarus, Canada, Holy See, Israel, Japan, Kazakhstan, Mexico, Morocco, New Zealand, United States of America.

⁹ See document T-MC(2019)84 for more information "Guidelines for States interested in signing, ratifying, accepting or approving the Convention on the Manipulation of Sports Competitions (CETS n°215)"

All Non-European countries can access the Convention, upon invitation from the Council of Europe Committee of Ministers.

Compliance and Follow-up Committee

Council of Europe conventions: These conventions need to be transposed into national legislation, by way of national law/declarations. Only then can they be applied. The Conventions obtain their legality from the States that choose to sign and ratify them, thus becoming State Parties to the conventions.

Becoming a Party to the Convention CETS 215 will give the country a place on the Follow up Committee of the Macolin Convention (articles 30-31). This Committee determines the implementation of the Convention and responsible of: monitoring, standard setting and developing the effectiveness of the Convention. It shall *inter alia* also be responsible for adopting recommendations and other protocols in annex to the Convention to be respected by all Parties and for deciding on working groups, focus areas, assistance activities and compliance by Parties.