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Tackling match-fixing: A European perspective
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Waking up to the problem of corruption in sport

- Corruption in sport is probably as old as sport

- New scale of problem
  - Proliferation of online betting any time and any where
  - Series of match-fixing scandals show that the cross-border dimension of betting, money laundering and match fixing required a cross-border solution
  - Example: Bochum case of 2011 where 32 matches in Germany and another 200 across Europe were considered to be tainted
EU Study – no uniform landscape

- 2012 Study for EU finds no uniform legal landscape in EU 27 to tackle corruption in sport but…
  - Some EU Member States focus on general offences of corruption or fraud
  - Others have implemented sport specific offences to address match-fixing either in their criminal codes (Bulgaria & Spain) or sports laws (Cyprus, Poland, Greece) or special criminal laws (Italy, Malta, Portugal)
So why is a European approach necessary?

- Although most of the EU 27 Member States have laws in place that could potentially tackle corruption there were too many loopholes
  - Lack of clear definition for corruption in sport
  - Some laws linked it only to betting activities (e.g. bribing an athlete to lose a match in order to win a bet)
  - Other laws include non-betting activities (e.g. bribing officials to obtain good results to win the league or to avoid relegation but no direct financial gain)
  - Example: Westfield case (initially charged under conspiracy to defraud his team but then under bribery rules in UK)

- Not always clear if athletes or officials caught if not actual employees

- Lack of cooperation
  - European prosecutors believed that a specific offence would facilitate their work and would encourage cooperation on investigations
  - Difficult for sports federation on their own (as compared to anti doping)
Council of Europe –
Convention on the Manipulation of Sports Competitions

- Council of Europe (consisting of 47 European countries including all 28 EU Member States) took the initiative to develop a new Convention

- Adopted in September 2014 and due to enter into force after 5 ratifications

- Signed by 27 European states to date of which 2 have ratified (Portugal and Norway)

- Also open to signature by non-European states with Australia, New Zealand, Canada, Japan, Israel and Morocco being potential signatories

Article 1

“The purpose of this Convention is to combat the manipulation of sports competitions in order to protect the integrity of sport and sports ethics in accordance with the principle of the autonomy of sport.”
Clear definition

Manipulation of sports competitions

“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.”

- Wide definition that includes both betting and non-betting forms of manipulation

- “Undue advantage” may take the form of a bonus to an employee, winnings from a sports bet, promotion of club or even just the “glory of winning”

- Attempt need not succeed for an offence

- Any improper alteration of the course of a sports competition and not just the final result may be caught, for example:
  - Getting sent off for a betting reason

- Criminal offence needs other elements
Sports organisations required to tackle manipulation

- Convention encourages cooperation between sports organisations, betting organisations and public authorities

- Convention encourages measures to improve sports organisations’ ability to identify, analyse and report manipulation of sports competitions:
  - Monitoring programmes for sports competitions at risk

- Arrangements to report without delay instances of suspicious activity linked to the manipulation of sports competitions
  - Example of Oriekhov case where referee failed to report a corrupt approach – risk that the criminals will succeed next time –
  - Oriekhov received a life time ban

- Whistle-blowing programmes and confidential reporting mechanisms (e.g. confidential hotlines etc.)
  - Leniency programmes – to ensure flow of information (Kaneira case)
Sports organisations – conflicts of interest

- Sports organisations encouraged to adopt and implement rules prohibiting conflicts of interest and disclosure of insider information:
  - Prohibition upon competition stakeholders from betting on sports competitions in which they are involved
    - FA v. Harris: “How can any fair minded fan have any solid confidence that a match is not fixed if there are players on the pitch who have thousands to gain if their team loses?”
    - Also events where they are not playing e.g. Montcourt v. ATP where tennis player betted online with just AUS $ 192
  - Prohibition upon the misuse or dissemination of inside information
    - Applies not only to athletes but also officials and athletes’ support personnel
    - Tennis includes not just player but entourage and even guests
Addressing sports betting concerns

- Betting companies also prohibited from conflicts of interests where they have a sponsorship relationship [Article 10]

- Convention distinguishes between different forms of “sports betting” so States can act in a consistent manner
  - **Illegal sports betting**: sports betting that is unlawful in jurisdiction where consumer is located
  - **Irregular sports betting**: sports betting that is inconsistent with usual or anticipated patterns for the market of the sports competition concerned
  - **Suspicious sports betting**: sports betting that appears to be linked to manipulation of sports competition on the basis of reliable and consistent evidence

- Sports betting operators obliged to report irregular or suspicious betting without delay to Betting Regulator and/or National Platform
Domestic and international cooperation to tackle offences

- Each State encouraged to grant the Betting Regulator with wide-ranging powers to tackle the potential manipulation of sports competitions:
  - Suspension of betting on competitions following an alert
  - Exchange of information for illegal, irregular or suspicious sports betting
  - Measures to prevent bets from competition stakeholders
    - Threshold for size of bets

- States should also establish a National Platform
  - Serve as an information hub,
  - Issue alerts to sports organisations and/or sports betting operators;
  - Co-operate with other National platforms (e.g. German platform can respond to a threat in Belgium involving a German team by cooperating)

Example: UK Gambling Commission cooperates with sports associations to flag up potential risks and in very serious cases draws the issue to the attention of the prosecution services
Criminal and administrative sanctions

- Criminal sanctions for the manipulation of sports competitions when it involves either coercive, corrupt or fraudulent practices
  - Aiding and abetting with intent also sanctioned

- Corporate liability for offences

- Illegal betting should be tackled through:
  - Closure of remote websites or restriction of access
  - Blocking of payments between consumers and illegal sports betting operators
  - Prohibition of advertising for illegal sports betting operators

- Seizure and confiscation of proceeds and assets used to commit offences
Sports sanctions can also be applied

- Sports sanctions recognised as being highly dissuasive for sportspersons

- No breach of principle of *ne bis in idem*
  - Practical problem when a scandal starts as prosecutors don’t want a case to be jeopardised by a disciplinary proceeding
  - Asif (Pakistan cricketer) who was sanctioned claimed that his rights of defence in the criminal case was prejudiced but this was rejected by Court
  - Good dialogue therefore essential

- Different burden of proof (balance of probabilities) and different evidential burden
  - Right to silence not guaranteed
  - Use of anonymous witnesses (Pedoba – under strict conditions)

- Mutual recognition of sanctions
Conclusions

- Convention has been welcomed by sports organisations as corruption in sport threatens the integrity of competitions and destroys the very ethos of sport.

- Why does it matter?
  - Sport is a common language
  - Sportspersons are heroes to our children
  - Our society is for the poorer when it is corrupted

- Convention is now just words on a page. However, to borrow the phrase of the Deputy Minister stated yesterday, it should become a living document.
  - You as criminal lawyers are the people who will bring it to life by prosecuting and defending cases.
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