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REPORT

FIGHTING AGAINST THE MANIPULATION
OF SPORTS COMPETITIONS

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Part 1
Context and Forms
of the
Manipulation of Sports Competitions

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PART ONE. CONTEXT AND FORMS OF THE MANIPULATION OF SPORTS COMPETITIONS

Any proposal for a solution to the issue of manipulation of sports competitions would be futile, inexact, unusable or deprived of effect, without going through a first step, which, for the sake of thoroughness, should be carried out when preparing the present report: describing and understanding the context and forms of manipulations of sports competitions.

In addition to its recurrence (introductory chapter), it appears that the manipulation of sports competitions is a phenomenon that takes complex forms (**Title 1**), and that is the product of a globalised economy riddled with transnational organised crime and money laundering activities (**Title 2**).

Introductory Chapter. The Recurrence of the Phenomenon of Manipulation of Sports Competitions

The phenomenon of manipulation of sports competitions is no longer limited to the interests of insiders. The succession of scandals punctuating the progress of different championships, and that the press does not fail to relay, gives a preview of the amplitude of a phenomenon that interests and preoccupies public opinion, as well as the competent authorities, reach beyond the sporting environment and can be found in the sports sections, as well as the political and economic sections of newspapers.

NOTE ON METHODOLOGY

Suspected or established fixes

It goes without saying that one should not confuse the competitions that are simply suspected of being manipulated and those in which the manipulation is established.

In the first case, one or more elements (changes in the odds and volumes of bets, the behaviour of players on the field, the conduct and outcome of the game, the presence around the field of suspected individuals, elements collected in the context of investigations, whether or not linked to the event, etc.) cause suspicions of manipulation.

In the second case, and according to the standards of proof that may differ depending on the nature of the proceedings, disciplinary or criminal, evidence of the manipulation was presented.

When proceedings are ongoing, and pending their conclusion, it is merely suspected that the competition was manipulated. The manipulation remains a simple hypothesis that is not proven.

Direct or indirect sources

In addition, two types of sources allow the identification of matches suspected of having been manipulated or in which a manipulation is established: direct sources and indirect sources.

The sources are called direct when the facts are recounted by the authors of the alleged or established offence or their accomplices, or when a final non-actionable disciplinary or judicial decision allowed the establishment of the facts constituting the sanctioned offence. The sources are indirect when the events described are neither recounted directly by the authors of the alleged or established offence or their accomplices, nor established by the competent national judicial or disciplinary bodies.

Among the direct sources, it is possible to identify, regardless of the method used (public or private investigations – wire taps, testimonies, confessions, etc. - interviews, denunciations, etc.), public or private statements of suspected persons or convicted of offences related to the manipulation of sports competitions (players, player entourage, referees, coaches, agents, members of organised crime etc.) or their accomplices.

Among indirect sources, the inventory of books and titles published on this subject, both in the most prestigious and widely read reference media outlets in the world and in more local and more specialised media, is, for the time being, one of the only ways to gain knowledge of cases for which no mechanism for centralising information has yet been designed. Indirect sources also include statements, alerts, reports, regulations and other documents produced by various institutions, whether governmental in the broad sense (Interpol, Europol, police or justice forces, parliaments, entities for fighting against money laundering, Universities, research centres and institutes etc.), regulators and their association, the sports movement (clubs, federations, associations of clubs or federations, etc.) and public and private operators (betting operators and their associations or operators specialising in risk assessment and the detection of fixing).

It is also possible to identify the declarations of other persons who, although they are not the authors or accomplices of such offences, possessed knowledge thereof. It is also possible to collect other peripheral information in the course of private investigations, which, through cross-referencing, allow to feed the suspicions of match fixing.

Public or private information

A final distinction must be made between public and private information: indeed, whether direct or indirect, information can be public or private.

Thus, the results of an investigation leading to a conviction will be considered public, as are the warnings issued by public or private operators and the reports they publish.

In contrast, information is considered as private if it was collected in a confidential interview or received from a privileged interlocutor having access to relevant data and wanting to share them anonymously, or if it was gathered through informants with access to certain sources.

The information available to the Sorbonne-ICSS Research Programme

The Programme had access to these various types of sources of information, via its own means and through the means provided by the ICSS.

An analysis of the list of cases of manipulation of sports competitions, whether established or suspected, over the past few years, allows one to measure the extent of this problem, its highly recurrent character and its predominant traits (**Section 1**). The conclusions that can be drawn from this analysis should however, be read with caution, having regard to the fragmentary nature of the facts communicated to the general public as well as to the public and sports authorities (**Section 2**).

Section 1. What a Review of the Facts Reveals on the Manipulation of Sports Competitions

A review of the documented and relayed cases of manipulation of sports competitions leads to an indisputable conclusion: these abuses currently concern all States and all regions of the world, blight some sports disciplines and threaten competitions presenting low stakes (in sports, and economically) as well as those of an international character. Cases of corruption involve athletes as well as their professional entourage, clubs, “official” stakeholders of sports organisations and even referees.¹ Regardless of the perspective used to analyse these cases, the manipulation of sports competitions comes out as a global phenomenon in every sense of the term.

§ 1. The Disciplines Affected by the Manipulation of Sports Competitions

The sports disciplines most affected by the manipulation of results are paradoxically those that are best equipped to detect and fight against this scourge.² In this regard, it is noteworthy that the first place goes to the most publicised sport: football.³ The famous “Bochum” case⁴, as well as the manipulation scandals in Italy⁵, Australia⁶, Salvador⁷, China⁸, England⁹ and many other countries led to

¹ FIFA currently classifies referees in the “officials” category in which are also included agents of players, match agents as well as members of commissions.

² This point should be stressed: although most well-known and publicised cases concern football, one must remain cautious. The methodological problem is in fact the same: those who do not seek do not find. Therefore, in the area of doping, the most affected athletes are not necessarily those that come to mind *a priori* (cyclists are tested more often than footballers).

³ Only disciplines where the participation of animals is excluded were taken into account in this analysis.

⁴ The “Bochum” case involves 320 football games in nine countries from the European continent including Turkey, Germany, Switzerland and Belgium. More than 10 million Euros were injected by Eastern European and Asian mafia networks to corrupt players, referees and federation officials. The main instigator of this scandal was sentenced in 2011 to five years of imprisonment by German courts. Other proceedings are still pending.

⁵ The scandal known as *Calcioscommesse* (football bets) started in June 2011 and involved close to 100 games of *Serie A*, *Serie B*, the *Lega Pro* and the *Lega Dilettanti*, all suspected of having been fixed by players and representatives of many Italian clubs. Until this moment, more than 50 persons were arrested and more than 100 persons were investigated by Italian authorities in investigations relating to this case. See [<http://www.foot.com/essayons-de-comprendre-un-peu-le-calciocommesse-178756.html>].

⁶ Nine players and one coach of a team in the first football division of the State of Victoria in Australia were arrested and banned for life for their implication in the manipulation of games that provided more than 2 million Dollars of gains to the organisers of the fraudulent bets. See [<http://www.theaustralian.com.au/news/ffa-life-bans-for-10-arrested-for-victorian-premier-league-football-match-fixing/story-e6frg6n6-1226719496952>].

⁷ Nineteen players of the national team of El Salvador were suspended when their participation in the manipulation of international games in the CONCACAF Gold Cup was established. See [http://www.nzherald.co.nz/sport/news/article.cfm?c_id=4&objectid=11144567].

⁸ Following the scandal of manipulated football games in 2010, (See [<http://edition.cnn.com/2010/SPORT/football/05/11/football.china.corruption.scandal/>]), nine persons, including players of a football club of Hong Kong, were arrested in January 2014 in connection with an investigation of the possible manipulation of matches of the Hong Kong First Division League. See [<http://www.channelnewsasia.com/news/sport/football-hong-kong/945874.html>].

⁹ After the publication of a video obtained by an English newspaper in which a former British football star claimed that he was able to manipulate matches, six persons, including the aforementioned former player were arrested and three players were prosecuted for fraud before English courts by the National Crime Agency. See [<http://www.dailystar.co.uk/sport/football/354982/EXCLUSIVE-Time-for-the-FA-to-sort-out-this-match-fixing-mess>] and [<http://www.nationalcrimeagency.gov.uk/news/284-players-charged-in-match-fixing-probe>].

investigations during which it was found that a significant number of matches and players were involved¹⁰.

Cricket is ranked second in number of cases of manipulation of national and international matches¹¹. Fewer cases were also uncovered in many other disciplines such as snooker, basketball, volleyball, wrestling, motor racing, boxing, badminton and handball.

The cases that were uncovered show that manipulators favour championships and other national competitions of football, cricket, basketball, handball, baseball and volleyball. Continental competitions were also affected by manipulations. This was the case of football championships organised by UEFA¹² and CONCACAF¹³.

Lastly, cases of manipulation of international competitions were fewer in number and involved football, snooker and cricket, whereas other sports such as wrestling, badminton or boxing were only marginal. In this regard, and once again, this Report is only a sample, and is not intended to be exhaustive. Suffice it to recall, for example, that match-fixing in boxing, whether or not related to sports bets, has always been a serious problem. However, one must remember that although the period covered was longer, since the phenomena observed are those that are detected, there will always be bias in the sample used.

¹⁰ For example, in 2013, four players were banned for life by the Maltese Football Federation (See [<http://msn.foxsports.com/foxsoccer/world/story/four-maltese-players-banned-for-life-for-match-fixing-040813>]); nine Spanish League matches were considered as suspect (See [http://www.marca.com/2013/08/06/en/football/spanish_football/1375809361.html]); one Austrian player was arrested for having attempted to manipulate matches (See [<http://sportsillustrated.cnn.com/2013/soccer/wires/11/28/2050.ap.soc.austria.player.arrested.1st.id.write.thru.0345/index.html#ixzz2mL8PgRk>]); two players from a Slovak team were investigated for having participated in the manipulation of matches (See [http://www.miamiherald.com/2013/11/25/3778233_2-players-from-fc-nitra-suspected.html]); eleven players were accused of manipulating matches in Estonia (See [<http://en.rsport.ru/football/20131202/705323831.html>]); and an investigation was launched concerning six football matches suspected of having been manipulated in Cyprus (See [<http://cyprus-mail.com/2014/01/04/investigation-ongoing-into-match-fixing/>]); eight players were suspended by the Lebanese Football Federation (See [http://fr.fifa.com/aboutfifa/organisation/news/newsid=2078835/index.html?intcmp=fifacom_hp_module_media_statements]); twelve players were sanctioned by the Malaysian Football Federation (see [<http://www.chicagotribune.com/sports/sns-rt-uk-soccer-malaysia-matchfixing-20131220,0,1717883.story>], [<http://www.thestar.com.my/Sport/Football/2013/12/27/Seven-more-players-in-the-docks-for-match-fixing/>]).

¹¹ Investigations concerning the manipulation of numerous internal tournament matches have led to the suspension of many cricket players in India and Bangladesh. See [<http://www.guardian.co.uk/sport/2013/may/16/indian-police-arrest-20-20-cricketers>],

¹² These instances involved the Champions League. See [<http://www.bbc.com/sport/0/football/21319807>] as well as the Europa League ([<http://edition.cnn.com/2013/12/03/sport/football/match-fixing-football-estonia-england/>]) organised by the Union of European Football Associations (UEFA) and were affected by cases of match manipulations.

¹³ The Gold Cup of the Confederation of North, Central American and Caribbean Association Football (CONCACAF) was one of the targets of manipulators on the American continent. See [<http://www.cbc.ca/sports/soccer/gold-cup-marred-by-match-fixing-attempt-report-1.1376001>].

§ 2. The Sports Participants Involved in the Manipulation of Sports Competitions

An analysis of the participants involved in manipulations¹⁴, results in the conclusion that in the vast majority of cases, whether in individual or team sports, these manipulations were accomplished/committed by athletes, and, to a lesser extent, by referees. These categories of participants are those that are subjected to disciplinary as well as criminal sanctions for acts of manipulation of sports competitions.

Other stakeholders such as agents, trainers, club officials and sports organisations are sometimes held responsible for such acts. Lastly, in some cases that remain exceptional, the liability of some journalists¹⁵ and members of the entourage of athletes¹⁶ was considered.

§ 3. Basics of the *Modus Operandi* followed in Cases of Manipulation of Sports Competitions

The identification and record keeping of headline cases also allows the uncovering of the basic *modus operandi* used in many cases of manipulations of sports competitions: substantial bribes, often in cash, paid to athletes, referees or officials through businessmen acting on behalf of betting unions with the objective of guaranteeing a given result before the close of a match or a particular competition; or deals concerning a spot or element whose influence on the result of the competition may or may not be decisive¹⁷ (spot fixing), which is becoming more frequent.

§ 4. The Geographical Distribution of Cases of Manipulation of Sports Competitions

Another perspective for analysis, which is not uninteresting, is the geographical ranking of uncovered or suspected cases of manipulation of sports competitions. In this regard, an inventory of the cases ranked by continent shows that Europe is the region of the world where most cases of manipulation are found. Indeed, in addition to the fact that almost all European countries were affected by cases of fixed football matches¹⁸, practically all sanctions imposed for manipulating competitions in sports such as snooker¹⁹ and tennis²⁰ involved European athletes.

¹⁴ Regarding participants involved in manipulations other than those belonging to the sporting domain, see *infra* Part 2, Title 1, Chapter 1, Section 1.

¹⁵ See [<http://www.newsdezimbabwe.co.uk/2012/02/zifa-bans-sharuko.html>].

¹⁶ In this respect, the girlfriends of French handball players involved in the case of manipulation of matches in 2012 were arrested for betting on suspect games. See [<http://www.leparisien.fr/sports/paris-suspects-luka-karabatic-sa-compagne-et-celle-de-son-frere-devant-le-juge-24-01-2013-2508609.php>].

¹⁷ Thus, causing a penalty preserves an important influence, as does the giving of two red cards to the same team (R. HOYZER).

¹⁸ Cases of manipulation of football matches were uncovered, among other places, in England, Spain, Italy, Slovenia, Slovakia, Greece, Denmark, Malta, Croatia, Finland, Turkey, Hungary, Austria, Russia, Ukraine, Cyprus, Norway, Belgium, Estonia, Sweden and Germany.

¹⁹ In September 2013, English athlete Stephen LEE was suspended for life by the *World Professional Billiards and Snooker Association*. see [<http://www.bbc.co.uk/sport/0/snooker/24114861>].

Asia became the continent where most cricket matches were manipulated. In 2013 alone, investigations regarding numerous games organised in the framework of national tournaments, led to the suspension of a significant number of players in India and Bangladesh²¹. Although the number of manipulations found on the Asian continent concerning football matches is significant²², this number remains inferior to that found in Europe. However, it was in Asia that certain championships were found to be entirely fixed.²³ In other words, although the cases reported in Europe are more numerous, the consequences are smaller for local leagues, which are more "resilient" to scandals than the (relatively) young Asian leagues. For the same number of fixed matches (in absolute terms, or as a percentage), some championships are more resistant than others.²⁴

As in Europe, the observations in Asia show that cases that were uncovered or reported concerned many different sporting disciplines²⁵

This is in contrast with the situation in Oceania, where manipulations only affect football, cricket and rugby.

The situation in Africa remains intermediary, since other than in football, very isolated cases were uncovered in cricket²⁶, boxing²⁷ and basketball²⁸.

With the exception of the Americas, where there were no established cases of manipulation in cricket, which can be explained by the fact that except in the Caribbean, this sport is not commonly practiced, all continents were affected by scandals of manipulation in football and in cricket.

²⁰ Russian, Italian, Spanish, Austrian and Serbian players were sanctioned in cases of manipulation of tennis matches. See [http://www.chinadaily.com.cn/sports/2013-06/08/content_16591798.htm], [<http://msn.foxsports.com/tennis/story/Spanish-tennis-player-receives-5year-fixing-ban-122313>], [<http://www.theaustralian.com.au/sport/austrian-tennis-player-daniel-koellerer-banned-for-life/story-e6frg7mf-1226067314852>], [<http://www.tennisintegrityunit.com/media/12/david-savic-anti-corruption-disciplinary-hearing/>], [<http://www.nst.com.my/latest/tennis-italian-player-coppola-handed-six-month-match-fix-ban-1.359024?localLinksEnabled=false>].

²¹ See [<http://www.guardian.co.uk/sport/2013/may/16/indian-police-arrest-20-20-cricketers>] and [<http://www.skynews.com.au/sport/article.aspx?id=896386>].

²² Manipulations were established or suspected particularly in Singapore (See [<http://www.reuters.com/article/2013/06/10/us-soccer-matchfixing-idUSBRE9590GD20130610>]), Lebanon (See [<http://dailystar.com.lb/Sports/Football/2013/Feb-27/208084-scandal-shames-lebanese-football.ashx#axzz2r3JzZylj>]), China (See [<http://www.bbc.co.uk/news/world-asia-china-21502085>]), Japan (See [http://ajw.asahi.com/article/behind_news/social_affairs/AJ201401030007]), South Korea (See [<http://www.theglobeandmail.com/sports/soccer/lifetime-bans-for-41-players-in-south-korea-match-fixing-scandal/article7095412/>]) and Malaysia (See [http://www.chicagotribune.com/sports/sns-rt-uk-soccer-malaysia-matchfixing-20131220_0,1717883.story]).

²³ See *infra* Part 2, Title 1, Chapter 1, Section 2, § 3.

²⁴ *Ibidem*.

²⁵ Football, cricket, volleyball, baseball and wrestling are the disciplines in which manipulations have been established in Asia. In Europe, in addition to football and cricket, snooker, handball, tennis and basketball were also affected by cases of manipulation.

²⁶ See [<http://www.espn.com/sports/tennis/story/135253.html>], see below, Part 2, Title 1, Chapter 1, Section 2, § 3.

²⁷ See [<http://www.ghanabusinessnews.com/2013/10/24/ghana-bans-boxing-promoter-four-years/>].

²⁸ See [<http://www.tribune.com.ng/news2013/index.php/en/sports/item/18348-nbbf-probes-match-fixing-allegation.html>].

In short, despite elements proper to each case, the manipulation of sports competitions remains a global phenomenon whose contours appear to be similar and well-defined when analysed by discipline, and by sports competitions affected, or even through observing participants whose liability was identified or in regions of the world in which the largest number of cases were uncovered.

These different observation angles account for the most recurrent traits of known cases of manipulation of sports competitions. However, a general picture, allowing for the explanation of this phenomenon in its entirety, cannot be based solely on previously collected data.

Section 2. The Appraisal of Facts Does not Reveal the Entire Picture about the Manipulation of Sports Competitions

In addition to bringing to light the global character and predominant elements of the manipulation of sports competitions (§ 1), a careful reading of the conclusions arrived at earlier allows one to make the observation that the information available on the subject is insufficient (§ 2).

§ 1. The Unknown Elements of Cases of Manipulation of Sports Competitions

Certain aspects of manipulation cases that make news headlines remain largely unknown. For example, little information was revealed regarding the way in which betting “unions” act, or their relationship with betting operators.

Furthermore, although the “sporting” aspect of cases is often well publicised, because of the impact of popular sports on the public, the information verifiable or documented by the authorities themselves, regarding criminal networks and their *modus operandi*, are still very sparse, despite the investigations conducted by some journalists and the studies carried out by certain institutions such as Interpol or Academia.²⁹ This aspect of cases of manipulation of sports competitions presents more similarities with other criminal activities than with sports, and because of this, is less interesting in the public eye,³⁰ even if the increase in suspicions of manipulation is starting to resonate with sports enthusiasts. This could explain why the media do not address these aspects with the same intensity. In addition, some State authorities have not yet grasped the importance and danger of the phenomenon of manipulation of sports competitions, which surprises them by its scale and complexity.

²⁹ See in particular in chronological order, D. HILL, *Comment truquer un match de foot ?*, éditions Florent Massot, 2008 et *The Insider's Guide to Match-Fixing in Football*, 2013, Anne McDermid and associates Ltd.; Institut national des hautes études de la sécurité et de la justice, *Les Cahiers de la sécurité*, n° 11, "Sport : risques et menaces," January-March 2010; M.R. HABERFELD, D. SHEEHAN, (eds.), *Match-Fixing in International Sports. Existing Processes, Law Enforcement, and Prevention Strategies*, 2013, Springer; *Intégrité des compétitions sportives*, 2014, Juris Corpus Collection, "Droit & Économie du Sport," Series, Juris éditions, Dalloz.

³⁰ See *infra* Part 2, Title 1, Chapter 1, Section 2, § 3: "League Collapse" and Part 2, Title 1, Chapter 2, Section 2 and Section 3.

Also, if one was to be satisfied with the information currently available, one would be inclined to believe that the main instigators of manipulations are the athletes. In fact, most sanctions inflicted so far were imposed primarily on athletes in numerous sports disciplines. However, this does not necessarily mean that the participation of other persons, and in particular officials and sporting directors, is excluded from well-known manipulation cases. The participation of such actors is most of the time very difficult to prove. Players are among the direct participants of acts of manipulation, and thus, can be easily connected to the acts of manipulation. Proving the collusion or gains obtained by the managers of teams³¹, sports organisations³² and clubs is a much more complex task. Certain sanctions recently imposed against clubs could lead one to believe that things are changing.³³ Certainly, imposing disciplinary sanctions against a club does not necessarily mean that this club's managers were involved in the manipulation, since clubs can be held legally accountable for the acts of their members, including players. However, some of the sanctions adopted by UEFA concerned club managers.³⁴

Apart from these exceptional cases, the liability of the actors involved, when these perpetrators are not the athletes, constitutes one of the lesser-known faces of cases of manipulation of sports competitions.

§ 2. The Concealed Scale of Cases of Manipulation of Sports Competitions

Certain aspects of cases of manipulation of sports competitions remain unknown. An analysis of data concerning these cases suggests that there exist occult methods of manipulation.³⁵ In fact, numerous clues – in particular those found in the present report – would lead one to think that the cases identified today make up only a very small part of a phenomenon, the real dimensions of which remain unknown. This visible part of the manipulation of sports competitions is made up of cases that were uncovered by whistle-blowers (including anonymous whistle-blowers) and through journalistic investigations³⁶ (often making use of

³¹ In a case that remains isolated, in December 2013, the owner of a Greek football club was found guilty of blackmail and corruption in connection with the manipulation of matches in the Greek championship (See [http://www.nzherald.co.nz/sport/news/article.cfm?c_id=4&objectid=11167869]).

³² Despite investigations aimed at establishing the involvement of officers of sports organisations, there is no recorded finding of liability for manipulation against these actors (See [<http://www.bbc.com/sport/0/football/21319807>], [<http://ewn.co.za/2013/01/06/ANCYL-welcomes-Safa-officials-reinstatement>] and [<http://www.newzimbabwe.com/news-12333-Asiagate+Henrietta+Rushwaya+acquitted/news.aspx>]).

³³ Sanctions against clubs were often imposed by UEFA (See [<http://www.theguardian.com/football/2013/jun/25/fenerbahce-besiktas-steaua-bucharest>]) and by the Italian football federation (See [<http://sports.espn.go.com/espn/wire?section=soccer&id=9450558>]); however, criminal proceedings involving these entities are rare (See [http://www.globaltimes.cn/content/827698.shtml#_UuEMrxBKHIV]).

³⁴ On 17 April 2009, UEFA excluded Macedonian club FK Pobeda from European competitions for eight years. The latter had participated in manipulations in the context of illegal betting at the preliminary round of the 2004-2005 Champions League. Its president, Aleksandar ZABRCANEC, and player Nikolce ZDRAVESKI were banned for life from all football-related activity.

³⁵ See the aforementioned works in footnote 29.

³⁶ One of the first publications that allowed the subject of manipulation of football to be made known was the product of a journalistic investigation. On this point, see D. HILL, *The Fix. Soccer and Organised Crime*, McClelland and Stewart, 2nd edition, 2010.

hidden cameras and covert sound recordings³⁷), or those that were uncovered thanks to the actions of sports and State authorities. A careful look at these cases uncovers interesting data concerning cases of manipulation, which may be taking place without arousing suspicion.

A. Popularity and Vulnerability of Sports

Thus, the collection of data concerning cases of manipulation indicates that the disciplines in which the most cases of fraud were uncovered are the most popular sports. Football is the most watched sport on the planet and is also ranked first for the amounts of bets. Conversely, although facts of manipulation of football matches were uncovered in many countries, such facts are rarely uncovered in many countries where this discipline has fewer followers.

Similarly, although cricket is the most popular sport in countries such as India, Bangladesh and Pakistan, it is in these countries that a large number of scandals related to the manipulation of matches came out.

It is possible that this situation was not brought about by chance. The most popular sports in a country are also those that draw the attention of the press, of sponsors, of the authorities and of bettors. In fact, there is a strong correlation between the popularity of a given sporting event and the volume of bets placed on such an event. Criminals seek this type of event with large betting volumes, since they allow them to bet large sums when they possess privileged information. A calculated determination allows them to bet a sum that is sufficiently large to cover their costs and make their operation profitable, while leaving them exposed to a slight risk of detection, through betting markets.

In addition, sports organisations tasked with the administration of these disciplines have bigger means at their disposal. However, the fact that manipulations were primarily detected in the most popular sports does not mean that these sports are the most affected. In fact, cases of manipulation of sports competitions organised in connection with less popular sports may certainly be ignored by the press, or even remain undetected, through the lack of means available to achieve such findings.³⁸

³⁷ In this way, on 29 August 2010, the British newspaper News of the World (NoTW) denounced the involvement of three Pakistani cricket players in the manipulation of several cricket matches. To support these claims, the daily newspaper used a video and several phone call recordings obtained in meetings and phone calls which were organised between undercover journalists and the manager of the players (See [<http://www.bbc.co.uk/news/uk-15160226>]).

³⁸ In the case of badminton, very popular in Asia, much less in Europe, and where matches of the second and third classes world championship are very easily manipulated, see the article published in the newspaper L'Express on 26 June 2014: "Trucage de rencontres sportives : la combine des petits paris," [http://www.lexpress.fr/actualite/sport/trucage-de-rencontres-sportives-la-combine-des-petits-paris_1554050.html]. This link between the popularity of a sport, the number of sporting bets it causes and the frequency of manipulations affecting it is not a revelation, but should lead the stakeholders in the fight against the manipulation of sports competitions to start thinking about the means to implement to break this chain of causation, in particular for the most popular sports.

The same reasoning can be applied to the types of competitions affected by manipulations. This reasoning leads one to think that cases of manipulation of football matches in lower league divisions, or in women's football,³⁹ or at the local scale, could be more numerous than those uncovered to date. However, these conclusions should be nuanced since it is more difficult to bet large volumes on these types of competitions without drawing the attention of operators and surveillance mechanisms.

Furthermore, important reservations should be made concerning the results of the geographical conclusions given above.

B. Relativity of the Geographical Element

Since the manipulation of sports competitions is a product of globalisation, it is very difficult to categorically conclude that a particular case affects a given country or region. In fact, as is the case with the sport itself, it is important to take into account multiple geographical factors. Acts of manipulation (planning and executing) are sometimes perpetrated on the territories of different States. And even when this is not the case, the place where the manipulated competition is disputed is but one of the factors to be taken into consideration. Other factors that can be relevant for the basis of jurisdiction of the authorities of one or more States are the nationality of the athletes or officials involved, the nationality of the criminal networks instigating the fraudulent acts or the nationality of the betting operators or virtual platforms. In practice, it is therefore difficult to establish a geographical listing of cases of manipulation on the basis of the place "where" they took place.⁴⁰ Even though there is no certainty in this area, one can assume that the countries in which the manipulations produced effects on the competitions are those where bets are open on matches that attract popular enthusiasm.

C. Effectiveness of Policies and Visibility of Manipulations

Also, the "quantity" of cases that were detected within a continent cannot serve as an indicator of the effectiveness of the authorities, simply because the real number of cases taking place in each territory remains unknown. Therefore, the absence of detection of fraud cases in certain States could either mean that the State took efficient preventive measures, or that this is the consequence of the total lack of repressive action or the absence of means of detection caused by a lack of resources.

Certain sports organisations are more inclined than others to provide the necessary efforts to combat acts of manipulation, which would, in principle, lead them to the detection of more cases. At the very least, some of these organisations publically relay their efforts to fight corruption without always communicating the uncovering of many cases. In fact, there is a real risk associated with the degradation of their image following the publication of information concerning a large number of cases of corruption. This is an important element of their communication policies.

³⁹ See [http://elpais.com/elpais/2013/12/05/inenglish/1386268449_855255.html].

⁴⁰ See *infra* Part 2, Title 1, Chapter 1, Section 2, § 3, "League Collapse".

A parallel can be drawn here with doping cases: federations that conduct very few drug tests uncover few cases of doping, which could lead one to think, sometimes erroneously, that these federations are affected by this phenomenon to a lesser extent.

Therefore, the number of cases uncovered constitutes only one among many other criteria to be taken into account when considering the prevalence of manipulation in a given sporting discipline.

Although precious information can be extracted from a general review of cases of manipulation of sports competitions, which are widely and frequently relayed by the press, it should be kept in mind that the list of cases that remain uncovered and escape press headlines is probably much longer than the list of cases revealed to the public. Therefore, marching ahead in the fight against the manipulation of sports competitions by widening the scope of investigations – and of acquiring information – constitutes a fundamental objective.

The recurrence of the phenomenon of manipulation of sports competition having been established, it appears that this phenomenon, which takes complex forms (**Title 1**), produces a global economy led by transnational crime and money laundering (**Title 2**).

Title 1. Globalisation, a Context Favouring the Development of the Manipulation of Sports Competitions

Today, sports constitute an economic activity which has reached a global dimension (**Chapter 1**). This globalisation phenomenon has brought about numerous consequences, some positive, others less so. In particular, by becoming a transnational market, the sports betting market was transformed, by a certain number of phenomena, such as the growing complexity of the types and forms of odds, their financialisation and the transformation of a market for amateurs into a market for professional investors. In particular, the sports betting market has become a vital support platform for money laundering (**Chapter 2**).

Chapter 1. Sports, a Globalised Economic Activity

It is not contested that sport currently constitutes a global economic activity as well as a market in and of itself (**Section 1**). The available data and the mutation in the sports sector, in particular, the substitution of high added-value commercial organisations with sports associations of a lower value, attest to this. However, it is essential to determine the size of this market as well as the advantages and drawbacks of enacting a legal framework for the sports market (**Section 2**).

Section 1. The Advent of Sports Markets

In contemporary developed economies, sports markets have considerably gained in size, often in the range of 1.5% to 2.5% of the GDP, *i.e.* representing a larger chunk of the economy than the textile, leather-footwear or steel industries. Sectors of a bigger weight are rare. These markets form “an industry” or a sector in which services (providing the possibility of practicing a sport, attending a sporting event and products linked to it) clearly constitute a preponderant part of the sector in comparison with physical goods (sports articles, sporting equipment). Most of these markets were transformed with the advent of the global economy during the past couple of decades, many of them having truly acquired the status of global markets. In addition, various sports markets are in constant interaction, and together form the sports industry (or sports economy)⁴¹.

These main interactions (§ 1) as well as the distinguishing features of the largest sports markets (§ 2) will be dealt with in this section.

⁴¹ Economics of sport as understood by the education and research academic disciplines is designated by “sports economics” (sports economic analysis or “science”).

§ 1. The Economic Scale of Sports Markets⁴²

The sports markets, taken together, form the sports economy and represent a considerable chunk of the overall economy in developed countries, a smaller part in emerging countries, and are a relatively small proportion in developing countries⁴³. In most cases, this appreciation of the economic weight of sports markets is based on “guesstimates”, rather than on a determination based on confirmed and collected statistics within a pre-established framework of statistics and accounting. Thus, the classification system used in the national accounting framework recommended by the UN to its Member States does not allow for an exhaustive spotting of economic flows in sports, or the isolation of flows affecting other economic sectors.

This problem of gathering information is accentuated when examining international flows in the sports economy, although these flows are the most dynamic in a context of globalisation: this leads to considerable data manipulation in order to partially reconstitute the international trade of sports articles found in Comtrade, the UN database.⁴⁴

At the national level, a few developed countries took up the task of establishing national economic accounts for sports, in order to have a proper, accurate and reliable statistical evaluation. This raises serious methodological issues that will be mentioned briefly.⁴⁵ First, these difficulties lie in the gathering of reliable and verifiable information on the economic dimensions of sport, and second, in a difficult choice between different sophisticated and rigorous, but costly accounting methods as well as a need for constantly updated economic figures from the State (Ministry of Sports), sports federations or local communities.

The usefulness of an economic approach for sports is evident. First of all, the different stakeholders involved in sports would benefit from being better informed of the economic scale of sports in order to gear their actions according to the economic weight of each sport and attract financing. Therefore, it is necessary for them to be able to have access, year after year, to the same statistical indicators in order to measure the economic evolution of the sports sector. This would result in the need to construct, maintain and "routinise" an economic accounting system for national sports. The need to know the impact that physical and sports activities can have on the national economy constitutes another motive for creating an economic accounting system for sports. Lastly, the creation of such an accounting system would be useful for measuring the impact of an external economic shock (for example, the current crisis) on the sporting sector.

⁴² See *infra*, § 2, 1, “Estimations Available on the Sports Market on the Global Level”.

⁴³ W. ANDREFF, “*The Correlation between Economic Underdevelopment and Sport*,” *European Sport Management Quarterly*, vol. 1, No. 4, December 2001, pp. 251-279.

⁴⁴ M. ANDREFF, W. ANDREFF, “Global Trade in Sports Goods: International Specialisation of Major Trading Countries,” *European Sport Management Quarterly*, vol. 9, 3, September 2009, pp. 259-294.

⁴⁵ W. ANDREFF *Mondialisation économique du sport, reference handbook in sport economy*, De Boeck, Brussels, 2012.

To sum up, the precise objectives of an economic accounting system for sports are the following:⁴⁶

- Giving a homogeneous, coherent and organised statistical view of financial flows and work resources put in motion by physical and sports activities, and putting an end to the coexistence of different quantifications of the economic activity linked to sports provided by contradicting sources;
- Providing, on a regular basis and at an adequate frequency (at least on an annual basis) and using the same classification system; sufficiently complete and reliable information on the economic scope of physical and sporting activities;
- “Routinising” the gathering of data providing information to the economic accounting system for sports and ensuring a routine frequency of publication of the figures;
- Facilitating the possibility of making economic impact analyses of sport, the modelling of the sport sector, its internal relationships and its exchanges with other economic sectors.

So far, these objectives are difficult to reach because of the different methods used, which represent as many national practices. It is important to present the five principal methods, including their systems of gathering and presenting their data and results (A to E).

A. Canada’s Sports Industrial Cluster

The Input-Output Table (IOT) accounting framework was used in Canada⁴⁷ for establishing a method of simulation aimed at identifying the branches presenting the most links to the sporting activity. Two branches are considered as being primordial to the sports industrial cluster; the sporting goods industry (branch 147 in the IOT prepared by Statistics Canada) and the sports services industry. The latter is assessed by branch 203 “Theatre, Sports and Other Leisure Services” of the IOT Canadian classification system containing 216 branches and 652 goods and services: two thirds of branch 203’s activities are made up of sport services specifically.

⁴⁶ W. ANDREFF, “The sports goods industry”, in: W. ANDREFF, S. SZYMANSKI, (eds.), *Handbook on the Economics of Sport*, Edward Elgar, Cheltenham 2006.

⁴⁷ M. SAINT-GERMAIN, J. HARVEY, “Caractéristiques de la grappe industrielle canadienne du sport à partir de simulations”, *Revue Juridique et Economique du Sport*, 46, 1998.

The simulation method consists in applying an exogenous increase shock of final demand⁴⁸ to the sporting goods industry, in order to find the nature of the industries with which the sporting goods industry has buy-sell relationships, and their intensity. The same method is applied to branch 203. The direct and indirect effects of the shock on the demand are taken into account, however, knock-on effects are not (these are the effects of the demand produced, in a second wave, by the spending of the revenue distributed at the time of the initial shock on demand, followed by a third, fourth, *etc.* wave). The calculations are made for the year 1990. When presenting the results of each simulation, only the 15 branches that are found to be the most closely linked to the sporting goods industry are retained under a “cluster”; then the same method is used with branch 203. The sporting goods industry makes 80.4% of all its purchases within the 15 branches making up its industrial cluster: 1/ The sporting goods industry itself (58.5%), 2/ wholesale trade (5.7%), 3/ the steel industries (2.2%), 4/ electrical energy (2.0%), 5/ financial and real estate agents (1.9%), 6/ banks and other deposit-taking intermediaries (1.3%), 7/ the plastic and synthetic resin industry (1.2%), 8/ telecommunications (1.1%), 9/ professional services for businesses (1.0%), 10/ the paper-cardboard industry (1.0%), 11/ the retail industry (1.0%), 12/ the organic chemistry industry (1.0%), 13/ the trucking industry (0.9%), 14/ other plastic products (0.8%), 15/ crude oil and natural gas (0.8%).

The same simulation using a shock on final demand applied to the branch “Theatres, sports and leisure services” indicates that it makes 87.5% of its purchases from within its industrial cluster, which is made up of the following industries: 1/ The theatre, sports and leisure service industry itself (67.6%), 2/ finance and real estate (3.9%), 3/ electrical energy (3.0%), 4/ professional services for businesses (2.6%), 5/ wholesale trade (2.0%), 6/ retail trade (1.7%), 7/ telecommunications (1.6%), 8/ various services for businesses (1.4%), 9/ rental of machines and other services (1.2%), 10/ banks and other deposit-taking intermediaries (1.2%), 11/ the repairs sector (0.8%), 12/ housing services (0.8%), 13/ breeding (0.7%), 14/ computers and linked services (0.6%), 15/ the commercial industry (0.6%).

The main benefit of this method is the identification, in advance, of the principal suppliers of the sporting goods industry and the sporting services branch. This IOT-based method allows an evaluation of the impact of the sports sector on the rest of the national economy, through its relation with the other branches. However, in order to do this, an exact determination of the effects induced on the economy should be made, and this highlights the first drawback of this method.

⁴⁸ Which would come down to calculating (in matrix notation): $\Delta X = (I - A)^{-1} \cdot \Delta Y$, where ΔY represents the initial variation (shock) of the final demand, ΔX represents the variation resulting from the production of all branches of the economy, I being the matrix unit, A being the square matrix of a_{ij} (technical factor of production), Y expresses the vector of final demand for all products of the economy ($Y = \sum Y_i$, for all products $i = 1, \dots, n$ if there are n products in the economy) and X represents the vector of total production of all products ($X = \sum X_i$).

The second limit stems from the fact that there are more than two branches that are central to the industrial sports clusters: in addition to sporting goods and sports services, there are also part of the clothing industry, part of the footwear industry, and parts of the naval construction and mechanical construction industries that are not taken into account in branch 147 of the IOT, and which produce sporting goods. In addition, advertising and sponsorship services, media outlets and insurance companies whose services are in part specialised in sports are also absent from branch 203.

B. A Multisectoral Simulation Model

In Germany, the method used was that of the sports satellite account. This method allowed the usage of the IOT in order to build a simulation model named Model-SPORT.⁴⁹ Using Germany's IOT established by the Federal Statistics Office (*Statistisches Bundesamt*) for the year 1993, as well as information collected in the sports satellite account, a sport-IOT integrating the sport sector and presenting its relationships with other branches of the German economy was created. The sport-IOT is constituted as follows. Its first quadrant includes intermediate consumption of 7 additional branches (the basic IOT being composed of 58 branches), whose production is specific to sports. These 7 branches are added to the common 58 German IOT branches by adding 7 new rows and 7 new columns for: 1/ The production of bicycles and sporting cycles, 2/ the production of sporting goods, 3/ the production of sporting footwear, 4/ the production of sports clothing, 5/ commercial sports service providers (fitness centres, sporting events organisers), 6/ services provided by sporting clubs and associations, 7/ sporting services provided by administrative bodies (federal government, *Länder*, municipalities).

In the second quadrant of the sport-IOT, each part of the final demand component is subdivided into two columns, one specific to sports, the other non-specific to sports, for example: $C_{i,s}$ = private consumption of products specific to sports (products originating from the 7 branches of the sport-IOT only, and not from the 58 other IOT branches) and $C_{i,ns}$ = private consumption non-specific to sports (originating from the 58 branches of the general IOT and not the 7 branches of the sport-IOT). The $C_{i,s}$ vector contains goods and services that can be used at the time when the sport is practiced and that can originate from one of the 58 branches of the general IOT. Investments, external trade and public consumption of sporting goods and services are not limited to the products found in the 7 "sport" branches. In the sport-IOT column, for the 7 branches specific to sports are added their value added components. The sum of the added values of these 7 branches is the GDP value of the sporting sector and it can be directly compared to the value of Germany's GDP (1.4% in 1998, which is superior to the weight of the textile industry).

⁴⁹ G. AHLERT, "Reasons for Modelling Sports in a Complex Economic Model: Two Examples", *European Journal for Sport Management*, 7, 2000; B. MEYER, G. AHLERT, C. SCHNIEDER, "Die ökonomischen Perspektiven des Sports: Eine empirische Analyse für die Bundesrepublik Deutschland", *Bundesinstitut für Sportwissenschaft*, 2000.

The IOT data from the base year used (1993), and extended until 1998, were used to feed a multisectoral econometric simulation SPORT model, based on the interdependences between the 7 “sport” branches and the 58 branches of the general IOT. This is a version of the projection model of the German economy that is extended to sports and finds its support in a regression analysis of the behaviour of consumers, producers, investors and other stakeholders of the German economy. This model is built using a detailed modelling of each branch (around 150 variables and 36,000 equations for the 65 branches, including the 7 “sport” branches), the main macroeconomic aggregates of the Comprehensive Economic Table (CET) being calculated by an explicit aggregation of branch data procedure. The model also includes the organisation of the CET in institutional sectors and in production, distribution and financial sectors. It describes not only inter-branch relationships (production, distribution), while distinguishing “sport” from “non-sport” but also, for each branch as well as for the whole economy, the private and public consumption, investments, construction, stock variations, exports, production, as well as prices, salaries, profits, taxes, imports and employment.

The benefits of this simulation model are that it gives a precise picture of the weight of sport and its sectorial components. It can be used as a forecast, to simulate the economic impact of sports in the event of an exogenous shock affecting the “sport” branches. This model provided a simulation of the economic impact of sports policy measures and of the hosting of the 2006 football World Cup in Germany. It provided a calculation of the economic effects of a total reorientation of the demand for sports activities, which was aimed until then, by households, at sporting clubs, towards providers of commercial sport. *The main results, until 2010, show a slight increase of the GDP of the sport sector due to the substitution of commercial organisations with a strong added-value by sporting associations with a weaker addedvalue.*

This can be explained by the fact that the commercial sporting sector remunerates employees to provide services that are provided for free by sporting club volunteers. Furthermore, the commercial sector makes profits and has to invest in sport installations whereas sporting associations often use municipal installations. However, the replacement of low added value sporting associations by high added value commercial organisations also reduces demand in intermediary consumption. Therefore, it does not integrate the commercial organisations into a supply chain found in the other branches as well as sporting associations. This low level of integration in industrial relationships further amplifies the fall in demand for inputs, which had a negative effect on employment,⁵⁰ in particular outside the sport sector, in the branches that constitute its main suppliers.

⁵⁰ For example, around 15.600 jobs were lost between 2000 and 2010.

C. Internal Sports Spending and Sport Financing

In France, the office of the Secretary of State for youth and sports (SSYS) decided to request a quantification “of the socio-economic dimensions of sporting phenomena” for the year 1990 (SSYS 1991). This involved an assessment of the gross internal spending (GIS) in the sporting sector, the sporting GIS. The quantification was carried out in view of financing sporting expenditures, the objective being to specify who finances sports in France and in what proportions. This study of the SSYS distinguishes between four types of financing stakeholders of sports: the State, local communities, businesses (sponsors and media) and households. Since 2000, macroeconomic accounts on sports are regularly published, with a systematic methodology and using a routine of gathering economic data concerning sports within the databases constituted every year by the National Institute of Statistics and Economic Studies (INSEE) and the Statistics Mission of the Ministry of Youth and Sports (MJS). This approach gives priority to the routine publication of numbers measuring the economic weight of sports. The data necessary to update the economic accounts of sports are now automatically provided each year to the MJS within the framework of a convention concluded with INSEE.

Since the accounts of the year 1999 (MYS 2001), the consumption of households is covered in an exhaustive manner by INSEE data. Expenses for sports of local communities are an estimation based on data collected by the Directorate-General of public accounting. Expenses linked to sports of businesses are estimated, except for the televised broadcast of sports, which is provided by the Audio-visual Council (CSA). These sports activities, and activities linked to the production of sporting goods and services are identified in the classification system of French activities (NAF) as follows.

For sporting activities: production of sporting events and management of sports installations (NFA 92.6A); other sporting activities (NFA 92.6C). For activities linked to the production of sporting goods and services: manufacturing of sportswear (NFA 18.2D to 18.2J), sports footwear (NFA 19.3Z); articles of saddlery and sports bags (NFA 19.2Z), sails (NFA 17.4C), sporting goods (NFA 36.4Z), bicycles (NFA 35.4C), recreational boats (NFA 35.1E), whips (NFA 36.6E), billiard tables and bowling equipment (NFA 36.5Z), weapons and ammunitions (NFA 29.6B), tires and other rubber products (NFA 25.1A), construction of airframes (NFA 35.3B), various buildings (NFA 45.2C), causeways and flooring for sports (NFA 45.2P), retail trade in sportswear (NFA 52.4C) and sports footwear (NFA 52.4E), sports newspapers (NFA 52.4R), sporting and leisure goods (NFA 52.4W); publishing of sports newspapers (NFA 22.1C, 22.1E); cable cars and ski lifts (NFA 60.2C), maritime and river port services (NFA 63.2C), rentals without an operator for other personal goods (NFA 71.4B).

In 2007, households accounted for half of the expenditure for sports in France. The second largest contribution comes from local communities (31%). The State and businesses finance 10% of the expenditures in sports. The data published in the economic account for sports distinguish between the different ministries spending on sports, within the State, and the budgets for sports of various local communities: counties, departments and regions. They break down the consumption expenses of households in sporting goods and services. Purchases of sporting services grow faster than those of sporting goods. The services section increased from 39% in 2000 to 44% in 2007. In the sporting goods category, only sales of sporting articles are increasing, whereas sales of sportswear and sporting footwear are dropping.

Economic accounts for sport in France also provide an evaluation of jobs created in the sports economy. First, these accounts provide a counting of employees employed in the "sport sector" itself, grouping the management of sports installations, salaried employments in sporting clubs and sporting culture centres, as well as jobs occupied in the teaching of physical and sports education (NFA: 93.11Z, 93.12Z, 93.13Z, 93.19Z, 85.51Z), making up 113.352 jobs in 2010. The sporting accounts also count jobs in the "sport subdivision" corresponding to the manufacture, distribution and rental of sporting articles (NFA: 30.12Z, 30.92Z, 32.30Z, 47.64Z, 77.21Z), amounting to 64.229 jobs in 2010. In total, the sports economy contributes in 177.581 jobs in France, or 0.7% of the total jobs. Tables 1 and 2 represent the aggregates of these data for recent years.

Table 1: Weight of Sports in the French Economy					
(Billions of Euros at current prices and %)					
Sport Economy	2006	2007	2008	2009	2010
Internal Gross Expenditure on Sport (IGES)	32.7	34.0	34.9	34.9	35.4
Annual Rate of Growth	4.8	4.0	2.6	0	1.4
Household Consumption for Sports	15.8	16.4	16.7	16.5	17.1
Annual Rate of Growth	4.4	3.8	2.2	-1.2	3.6
Gross Domestic Product (GDP)	1798.1	1886.8	1933.2	1885.8	1937.3
Annual Rate of Growth	4.7	4.9	2.5	-2.5	2.7
IGES / GDP	1.8	1.8	1.8	1.9	1.8
Sport / Total Household Consumption	1.6	1.6	1.6	1.6	1.6

Source: MSJEV 2013

Table 2: Salaried Employment in the Sports Economy: France					
Number of Employees	2006	2007	2008	2009	2010
Sport Sector	104.875	110.414	112.064	115.543	113.352
Sport Subdivision	72.435	72.862	69.740	66.300	64.229
Sport Economy	177.310	183.276	181.804	181.843	177.581
Rate of Variation	2.9	3.4	-0.8	0.2	-2.3

Source: Pôle Emploi 2013

D. First Accounting Trial for the American Sporting Industry

One of the rare areas in which sports economics in the United States is behind in comparison with Europe is the macroeconomic accounting of sports.⁵¹

Recent work has in part bridged the gap.⁵² The national accounting methods are not used, the argument being that the North American Industrial Classification System (NAICS) does not allow for an identification of the sports sector, since, on the one hand, this area is (as it is in Europe!) fragmented between different branches, and on the other hand, in order to eliminate the risk of overestimation of the economic value of sports. Several sources are coveted for the gathering of data for the year 2005, concerning: 1/ economic activities linked to the practice of sports; 2/ activities linked to sporting events; 3/ media coverage of sporting events.

The number of persons practicing sports is estimated by the National Sporting Goods Association (NSGA): 484 million people (including multi-practice, since the American population is 297 million inhabitants), with walking in the top position (88 million), swimming (57 million), bowling (45 million), club fitness (37 million) and cycling (36 million).

The realistic character of these data is controlled by those of the Behavioural Risk Factor Surveillance System that only accounts for the adult population. The two data sources are based on regular telephone surveys based on a sample of the population. The NSGA also provides the number of spectators of American sports. Thus, out of 227 million spectators in 2005, the Major League Baseball (MLB) was followed by 74 million, NCAA⁵³ Football by 43 million, NCAA Men's Basketball by 31 million, National Basketball Association (NBA) by 21 million, the National Hockey League (NHL) by 20 million, the National Football League (NFL) by 17 million, Minor League Baseball by 16 million, the various NASCAR competitions (car races and truck races) by 12 million, and the Major League Soccer (MLS) by only 2.9 million. The NSGA also publishes data on TV sports audiences. Thus, the NFL had 106 million spectators, the various NASCAR series had 86 million, 77 million for the MLB, 61 million for the NBA, 38 million for the Professional Golfers Association (PGA), 26 million for professional tennis, 13 million for the NHL and 10 million for the MLS. However, these data are incomplete.

An economic census of American firms is carried out once every five years according to the NAICS. At the most disaggregated level (6 digits), a large number of activities linked to sports can be found. This is how the value of supply on the sports market, is monitored, in part by the preceding figures.

⁵¹ W. ANDREFF, "Some Comparative Economics of the Organisation of Sports: Competition and Regulation in North-American vs. European professional Team Sports Leagues", *The European Journal of Comparative Economics*, VIII, 1, 2011, pp. 3-27.

⁵² B.R. HUMPHREYS, J.E. RUSESKI, "Problems with Data on the Sport Industry", *Journal of Sports Economics*, 11-60, 3 December 2009, DOI: 10.1177/1527002509354893.

⁵³ The *National Collegiate Athletic Association* designates college sport.

The demand is estimated based on household expenditure data collected by the NSGA and the US Bureau of Economic Analysis (BEA). In 2005, purchases of sports articles were at about \$13 billion; those of sportswear were at \$11 billion; and purchases of sports footwear totalled \$16 billion. These figures, added together, make up 0.76% of the total consumption expenditure in the United States. A summary of this information is reflected in Table 3, in order to measure the economic value of the sports branch estimated for supply and demand. The discrepancies confirm the fact that the compilation of sources did not follow the principles of double-entry bookkeeping.

Table 3 : Estimated Economic Value of the Sports Branch		
United States 2005 (\$ billion)		
	Offer	Demand*
Practice of Sports	61,00	46,39
Including: Sports Articles	7,50	13,47
Sports Shoes	31,40	10,90
Sportswear	5,50	15,70
Memberships	16,60	3,25
Sporting Events	6,30	15,90
Transmitted Sporting Events	5,65	
Total	72,95	59,22

* NSGA estimate (higher than BEA estimate).

Source: Humphreys & Ruseski 2009.

E. Towards a European Economic Accounting System for Sports: the European Satellite Account

In 1984, the Council of Europe took the initiative of measuring the economic scale of sports in Europe. The first result was published in the Jones Report (1989), which estimated the economic weight of sports in the GNP of some European States in 1985 (the figures ranged between 0.9% for Finland and 1.8% for the Netherlands). A second report commissioned by the Council of Europe in 1992⁵⁴ was based on a homogeneous questionnaire sent to experts of the twelve countries participating in the study in order to acquire the exact same data. The objective was to find out the proportion that the State, local communities, businesses and households contribute to in the GIS for sports. To these income streams are added the corresponding use (the destination) of the funds collected in favour of sports, which maintains the double-entry bookkeeping principle and should allow the avoidance of double counting. The destinations taken into account in the study are: high performance sports, sporting federations, sporting associations, sports installations and sporting events.

⁵⁴ W. ANDREFF, J.-F. BOURG, J.-F. NYS, *The Economic Importance of Sport in Europe: Financing and Economic Impact, Background document to the 14th Informal Meeting of European Sports Ministers*, Council of Europe, Strasbourg, April 1994.

The results obtained (Table 4) are comparable to those obtained in the Jones Report, despite the methodological differences and the evolution of the sports economy between 1985 and 1990. In the seven countries that are found in both studies, the economic weight for sports varies between 0.6% of the GDP in Denmark and 1.8% of the GDP in Portugal in 1990; all other countries being situated within this interval, with the exception of Switzerland (3.5%). In all these countries, households are the primary source of sports financing, followed by local communities (except in Hungary, where the central State allocated more resources to sports than the communities in 1990). In most of the countries surveyed, private financing (households, businesses) is superior to public financing, with the exception of Denmark, France, Hungary and Portugal.

Table 4 : Economic Weight of Sports: Sources of Financing, Europe 1990 ⁵⁵											
(\$ millions PPP*)											
Financing by:	Germany	Denmark	Spain	Finland	France	Hungary	Italy	Portugal	UK	Sweden	Switzerland
State	120	53	309	76	1 333	57	1 066	191	132	47	38
Local Communities	5 768	275	993	433	4 335	31	1 422	224	2 487	453	464
Businesses	828	46	N/A	81	665	11	1 026	81	836	358	247
Households	14 954	467	8 102	1 163	8 543	89	9 435	705	1303 6	1 258	8 144
Gambling, Sports Bets	190	n.d.	n.d.	93	6 500	5	3 827	56	5 366	424	255
Volunteering	1 630	563	508	391	1 804	n.d.	2 128	79	336	1505	n.d.
Total	23 490	1 404	9 912	2 237	23180	193	1890 4	1 336	2219 3	4 045	9 148
% of GDP***	1,29	0,56	1,68	1,19	1,43	0,60	1,23	1,81	1,77	0,95	3,47

In 2006, an Austrian proposal led the Sports Directors of the 27 countries of the European Union to decide on the creation of the Sport & Economics working group, whose objective was to measure the weight of the sports sector in the GDP and its effect on employment, added value and purchasing power, as well as the dynamics of this sector over time, and for that reason to create a reliable database. The method chosen was the elaboration of a satellite account for sports on the basis of the supply in sports.

Prior to the preparation of the satellite account, a triple definition of sports was adopted in 2007 (the Vilnius definition). The statistical definition of sport can be found in the list of NACE codes under "Sports Activities" (NACE 92.6 Rev 1.1). This is the only subdivision (class) of the European activities classification system that collects economic statistics on sports. A narrow definition of sports is the following: all activities providing an input to sports activities, *i.e.* all goods and services necessary for practicing a sport (or the upstream level of the sports sector in a triangulated IOT), to which is added the content of the statistical definition.

⁵⁵ W. ANDREFF, J.-F. BOURG, J.-F. NYS, *The Economic Importance of Sport in Europe: Financing and Economic Impact, Background document to the 14th Informal Meeting of European Sports Ministers, op. cit.*

Regarding the broad definition of sports, such a definition contains all activities that require an input of sports in order to achieve their production (the downstream level of the sports sector), *i.e.* all goods and services that use sports as an intermediary consumption, to which is added the content of the narrow definition of sports. From a production standpoint, the upstream level of the sports sector covers sports education, sports infrastructure, financial services financing sports, the production of sports articles, their wholesale and retail trading activities, advertising. The downstream level of the sports sector contains television and other media outlets, tourism, nutrition (performance nutrition), the health system, sports betting and lottery activities and R&D dedicated to sports. The main difficulty is finding all the goods and services in the industrial classification systems, or alternatively, trying to estimate the weight of production linked to sports in a classification that is not dependent on the use of goods and services (for example, estimating the weight of sportswear in the total production of clothing in the textile industry, the weight of sports shoes in the production of the footwear industry, *etc.*).

This same upstream/downstream level identification method can be used for consumption activities linked to sports. In the upstream level, goods necessary for practicing sports, horse racing, competition cars and motorcycles, sailboats, fitness centres, education (time slots dedicated to physical and sports activities), dance schools, watches, stopwatches and measuring instruments. The downstream level includes televised broadcasting of sporting events, hotels and restaurants, health services, sports bets, nutritional supplements and veterinary services.

Using the Vilnius definition reaches a high degree of complexity when attempting to establish a data collection instrument. It takes the form of a large matrix – a big table showing the correspondence between the branches of the NACE classification system and the CAP products classification system, which contains, in its 2008 version, 408 items for which statistical data should be found. Such a task is extremely time consuming (for the collection of data) and costly (financial cost of the execution). This is why only six countries of the European Union out of 27 have elaborated a European Sports Satellite Account (aggregation of results in Table 5). The European Satellite Account method does not contain, at present, a monetary estimate (or even a non-monetary estimate) of non-monetary flows – although this is one of the benefits attributed to satellite accounts – and in particular, the economic scale of sports volunteering.

European Satellite Account	Germany	Austria	Cyprus	The Netherlands	Poland	United Kingdom
	2008	2005	2004	2006	2006	2006
Sports Added Value/GDP	3,3	4,9	2,4	1.0	2.0	2,3
Sports Consumption/Total Consumption	6,6	3,6	3,7	n.d.	2,1	2,9
Sports Employment/Total Employment	4,4	6,4	2,2	1,5	1,5	2,5

Sources: European satellite accounts of the countries concerned.2013

Therefore, sports markets develop in a globalised economy, and within these markets falls the development of sports betting. This global dimension and the interaction between markets in the same sector and related markets account for the high porosity of the sports betting market to certain risks.

§ 2. The Globalisation of Sports Markets

The most global element of the sports economy relates to sporting events, and their immediate derivative products, televised sporting events and sports betting. A rapid growth of the number of annual international or global sporting events can be observed: 20 in 1912, 315 in 1977, 660 in 1987, and 1,000 in 2005.⁵⁶ This amounts to roughly three events per day! Their audience is becoming more globalised each day thanks to television. The globalisation of sporting events culminates in the main global sporting events, such as the Olympic Games and the football World Cup. The accuracy of the measuring of the economic weight of these events is constantly improving.⁵⁷ However, the fallout produced by these events on the economy of the host countries is often exaggerated and widely reported, but founded on grave methodological errors.⁵⁸

In other words, the globalisation of the various markets forming the global economy should be presented (**A** to **H**) before finding out whether these markets are accounted for in a serious manner (**I**).

A. The Globalisation of the Televised Sports Broadcasting Market

The televised sports broadcasting market is a global one, the major sporting events being broadcasted in 170 to 220 countries. This market has a polarisation effect on certain sports (football is globally more widely broadcasted) but also excludes certain less popular and less widespread disciplines. Do you remember your last polo or pelota match watched on TV? Television exacerbates the other elements of inequality in economic development between the sports⁵⁹ depending on its financial and media interests. In fact, the larger the audience of a sporting event, the more a television network can charge for advertising spots right before the event and at halftime.

Another characteristic of the global televised market for sports is that it is never perfect. It presents a variety of forms in which, either the short side of the market imposes its conditions on transactions, or the prices are fixed in a bilateral monopoly by a balance of power, and not by purely economic factors.

⁵⁶ J.-F. BOURG, J.-J. GOUGUET, *Économie du sport*, Repères n° 309, La Découverte, 2005.

⁵⁷ M. KURSCHIEDT, *The World Cup*, in: W. ANDREFF, S. SZYMANSKI, (eds.), *Handbook on the Economics of Sport*, Edward Elgar, Cheltenham 2006; H. PREUSS, *The Economics of Staging the Olympics: A Comparison of the Games 1972-2008*, Cheltenham: Edward Elgar, Cheltenham, 2004.

⁵⁸ J.-F. BOURG, J.-J. GOUGUET, *The Political Economy of Professional Sport*, Edward Elgar, Cheltenham 2010; W. ANDREFF, *Mondialisation économique du sport*, De Boeck, Brussels, 2012.

⁵⁹ W. ANDREFF, "Les inégalités entre disciplines sportives: une approche économique", in: C. POCIELLO, (dir.), *Sports et société: Approche socioculturelle des pratiques*, Vigot, Paris 1981.

The most frequent forms of the market⁶⁰ are: a/ A monopoly, when an organiser of an exclusive sporting event offers its event to competing television stations (IOC offering the Olympic Games, FIFA for the football World Cup); b/ an oligopsonistic monopoly, when the organiser of the sport is faced with very few potential buyers (European – and French – football championships); c/ a bilateral monopoly, a frequent situation when there was only one public television station on the national market or a European cartel of public stations (EBU) which bought the rights for the European championship; d/ a monopsony, when professional clubs are competing to each sell their own broadcasting rights to a single television station (French of English football championships in the 1970s).

B. The Globalisation of the Sports Betting Market

Since the first decade of the 21st century, the sports betting market reached global proportions. It is the prototype – along with financial markets – of a totally globalised market. Anyone can access an online betting offer anywhere (take an English bookmaker) from the location of the bettor (take Malaysia or China) to bet on the results of sporting events taking place in a third country (take Italian or Spanish football championships), in real time. The globalisation phenomenon even reaches a global market ubiquity with the live betting service: this service not only allows one to make the bets described above, but also allows bettors to change their bets during the 90 minutes of the game (football) and also to bet on game results as well as specific game actions that do not affect the sporting result, from anywhere in the world. This hyper-globalisation is the source of most issues discussed in the present report.

The globalisation of sporting events by television broadcasting has led to the globalisation of sporting sponsorship: sponsors of major global sporting events such as the Olympic Games or the football World Cup are multinational corporations: Coca Cola, Pepsi, Visa, MasterCard, McDonald's, Mars, Kodak, Time-Life, Fuji, Philips, Canon, Panasonic, Xerox, *etc.* ... as well as global sporting goods corporations such as Nike, Adidas, Puma, Asics, Mizuno, *etc.* The analysis of sporting sponsorship is well established today.⁶¹ A new tendency is naming, which consist in associating the sponsor's name to a stadium's name or to the name of the sponsored team.

C. The Globalisation of the Sporting Goods Distribution Market

The distribution of sporting goods is partly globalised. Trade names such as Décathlon, GoSport, Sport 2000 have a network of stores in many countries. In addition, foreign markets are supplied by exports made by retailers as well as manufacturers of sporting goods.

⁶⁰ J.-F. BOURG, J.-J. GOUGUET, *The Political Economy of Professional Sport*, Edward Elgar, Cheltenham 2010.

⁶¹ C. JEANRENAUD, "Sponsorship", in: W. ANDREFF, S. SZYMANSKI, (eds.), *Handbook on the Economics of Sport*, Edward Elgar, Cheltenham 2006. See also *infra* Part 2, Title 1, Chapter 1, Section 1, § 3, an analysis of the recent tendencies in the English Premier League.

For a long time, international trade in sporting goods remained absent from research in the field of sports economy. A trailblazing article⁶² had shown that France profited from a trade surplus for sports articles, since its net imports of standard articles – that can be used for different sports, such as sportswear, tracksuits, certain shoes – were more than compensated by net exports of goods for specialised sports – whose practice cannot be achieved without specialised instruments such as skis, windsurfing boards, sailboats, *etc.*

A first study on the international trade of sporting goods on a global level⁶³ shows a regionalisation of trade, the principal trading parties of European Union countries being the other members of the European Union in 1994. The same can be said of the NAFTA countries as well as the ten main Asian countries exporting sporting goods among themselves. Since then, a study based on data from the UN's Comtrade database⁶⁴ has shown that NAFTA, and in particular the United States, and the European Union to a lesser degree are net importers of sporting goods whereas the Asian countries, and in particular China and other emerging countries are net exporters. At a more detailed level, the analysis of the data shows that developed countries have few comparative advantages, but that these advantages are found in instrumented sports, in particular skis, sailboats, surfs, golf and table tennis. Emerging countries have significant comparative advantages in sportswear and sports shoes, anoraks, balls, rackets, skates and gymnastics equipment, *i.e.* standard products with low added value levels. The international specialisation observed in emerging countries as net exporters of sporting goods is largely determined by Foreign Direct Investment (FDI) made by multinational corporations in the sporting goods industry relocating their production facilities to developing countries and emerging countries.

There are currently two ways of detecting the role played by FDI and multinational corporations in the globalisation of the production of sporting goods. One way is to observe re-exports of standard sporting goods from developing countries to developed countries, through relocated subsidiaries by MNCs from developed countries.⁶⁵ The other way is based on monographs of multinational companies in this industry. Nike's monograph is particularly interesting since this company was the first to adopt a global strategy different from that used by its competitors (who later emulated its strategy). It is a production relocation strategy not involving FDI, achieved by concluding contracts with Asian subcontractors leading to outward-processing trade). This resulted in Nike becoming a hollow corporation whose production in the United States is limited to commercial and financial services.

⁶² W. ANDREFF, "L'internationalisation économique du sport", in: W. ANDREFF, (dir.), *Économie politique du sport*, Dalloz, Paris 1989.

⁶³ J. HARVEY, M. SAINT-GERMAIN, "Sporting Goods, International Division of Labor, and the Unequal Hierarchy of Nations", *Sociology of Sport Journal*, 18, 2001, pp. 231-246.

⁶⁴ W. ANDREFF, "Équilibre compétitif et contrainte budgétaire dans une ligue de sport professionnel", *Revue Economique*, LX, 3, 2009, pp. 591-633.

⁶⁵ W. ANDREFF, "L'internationalisation économique du sport", *op. cit.*; W. ANDREFF, *The sports goods industry*, in: W. ANDREFF, S. SZYMANSKI, (eds.), *Handbook on the Economics of Sport*, Edward Elgar, Cheltenham 2006.

D. The Globalisation of the Sports Labour Market

Another globalised international flow is the labour market for high level athletes: this market involves international transfers of players, including transfers of minors in illicit, illegal and even properly scandalous conditions.⁶⁶ This market was completely deregulated after the 1995 Bosman decision⁶⁷ and the resulting free international mobility of players. Thus, in certain countries, a sports discipline may lose control of its balance of transfers (difference between players transferred abroad and players brought from abroad), as was the case in French professional football in the early 2000s. Other flagrant and long-lasting imbalance between incoming and outgoing flows were also observed in Latin American countries (Brazil, Argentina) and Africa. One of the most dangerous consequences is the birth of a parallel market for minor players, by circumventing one of the rules established by the FIFA regulations in 2001, which provide for a prohibition of transferring players under 18. An alternative regulation, to be extended to all sports, and not only football, conceived on the basis of the Tobin tax, would be a “Coubertobin” tax⁶⁸ destined to slowing down the international mobility of players according to their age at the time of their transfer and using the gains to finance the development of sports in these players’ home countries.

E. The Globalisation of the Misuse of Finance

The phenomenon of globalisation is exploited by those who contribute to the worst forms of financial and other kinds of abuses in sports. We are in the presence of a *terra incognita* not only for researchers, but often for the civil society. Two exploration attempts on the basis (of a beginning of) an economic analysis remain insufficient⁶⁹ since, in this field, legal expertise is an essential complement. Fixed matches and the corruption of referees evolve at the same rate as illegal international sporting bets do. These illegal bets are multiplied due to new information and communication technologies, and the easy access to online betting services. This report’s objective is specifically to deepen the analysis of phenomena that lead to the distortion of the normal functioning of sports bets by the means of match-fixing and to find solutions.

⁶⁶ E. TSHIMANGA-BAKADIABABU, *Le commerce et la traite des footballeurs africains et sud-américains en Europe*, L’Harmattan, 2001.

⁶⁷ See *infra* Part 1, Title 1, Chapter 1, Section 2.

⁶⁸ W. ANDREFF, “La taxe Coubertobin. Ou comment réguler les transferts des très jeunes athlètes en provenance du tiers-monde”, in: *Apprendre à douter. Questions de droit, question sur le droit. Mélanges en l’honneur du Professeur Claude Lombois*, PULIM, Limoges 2004, pp. 796-816; W. ANDREFF, “The Taxation of Player Moves from Developing Countries”, in: R. FORT, J. FIZEL, (eds.), *International Sports Economics Comparisons*, Praeger, Westport 2004, pp. 87-103.

⁶⁹ W. ANDREFF, “Financing Modern Sport in the Face of a Sporting Ethic”, *European Journal for Sport Management*, vol. 7, No. 1, 2000; W. ANDREFF, “Dérives financières : une remise en cause de l’organisation du sport”, *Finance & Bien Commun*, n° 26, Winter 2007/1, pp. 27-35.

The laundering of money through sports is being investigated by the FATF at the OECD level, and in France, by the Tracfin (Ministry of Finance) and the central service for the prevention of corruption (Ministry of Justice).⁷⁰ Through these international capital flows transiting or investing in sports, money obtained in a questionable way uses the globalisation of the financial circuits in order to regain its normal shine (the first “washing machine” used to launder dirty Russian money through sports was the Italian cycling team Roslotto between 1992 and 1994) or allows its owner to acquire a global notoriety (the acquisition of Chelsea by Abramovitch, and many other football clubs by “oligarchs”). The globalisation of doping caused the development of an economic analysis of doping from a theoretical angle⁷¹ and led to a recent suggestion of another method of fighting against doping than the one led by the IOC and the AMA.⁷² The globalisation of economic flows traversing sports remains a blurry area, and a first task simply consists in trying to reassemble rare and often secret data.

F. The Globalisation of the Market of the Practice of Sports

The economic globalisation of the practice of sports remains uncommon if it is to be defined by the fact that a resident of one country regularly visits another country (joins a sports association, or a fitness club, *etc.*) in order to satisfy his or her need to practice sports. It is in this sense that it will be said⁷³ that the market of sports practice is not globalised. However, if one is to consider the international spread of various sports disciplines, this propagation is done by three means. A limited but growing number of sports disciplines develop a practice outside of the country of origin of the practitioners: ski, mountaineering, sailing, canyoning, trekking, rally raid, *etc.*). This leads to a consumption of sporting services (equipment rentals, instructor and guide services) outside the country, engendering an international spread of sports consumption.

G. The Global Development of the Sports Economy

Another older form of geographical propagation of sports between various countries is the establishment in a country, of a sports discipline coming from another country. The arrival of “soccer” in the United States during the 1980s is one of the most discussed and analysed examples. Conversely, the arrival of baseball and American football in Europe is more recent. Other historical examples exist: the export of football and rugby from England to France, of English cricket to India, of table tennis, judo and other martial arts from Asia to the rest of the world, of Frisbee from the United States, of Basque pelota to the United States, and so on. The economic flows associated to these sports also reached other countries.

⁷⁰ See N. PONS, *Cols blancs et mains sales. Économie criminelle, mode d'emploi*, Odile Jacob, Paris 2006.

⁷¹ A. BERENTSEN, “The Economics of Doping”, *European Journal of Political Economy*, 18, 2002; N. EBER, J. THEPOT, “Doping in Sport and Competition Design”, *Recherches Économiques de Louvain*, 65, 1999.

⁷² W. ANDREFF, “Tour de France: Success story, competitive imbalance and doping”, in: D.J. LARSON, D. VAN REETH, (eds.), *The Handbook of Professional Road Cycling Economics*, Springer, 2014 (forthcoming).

⁷³ See *infra* Part 1, Title 1, Chapter 2, § 3.

The economic globalisation of sports based on the spatial propagation takes the form of the development of the sports economy in countries where that economy was previously little developed or undeveloped (former colonies, developing countries), or developed on the basis of a Statist model for sports that is incompatible with the increasingly commercial globalisation of sports (former communist countries transiting towards market economy). Mimicry, national pride, international competition in every domain (including sports) and other non-economic factors lead to the mobilisation of material, human and financial resources in sports throughout the world. Here, the terms “unequal globalisation” or unequal development of the global economy seem to be appropriate, since such development follows the economic development in the first case, and the systemic transformation in the second case.

If sport cannot be considered as a poor parent in developing countries in view of the talent of the local athletes and the role of sports in the official national ideologies, the sports economy is underdeveloped, in correlation with the general underdevelopment of the economy in these countries.⁷⁴ The rates of sports practice (percentage of sports enthusiasts in the total population) are low, often between 0.1% and 10%, largely inferior to the numbers in developed countries (more than 25% in all these countries, regardless of the definition and the measuring method used).

The lack of infrastructure and sports installations prevents most developing countries from hosting large global sporting events.⁷⁵ In addition, the *per capita* revenue differences explain the fact that the best athletes from developing countries have a strong tendency to move to developed countries or rentier States (oil, gas) and perhaps apply for citizenship of that country.⁷⁶

The economic globalisation of sports would not have progressed as much without the permissive attitude of authorities regulating global sports. This attitude was adopted since the 1980s, in particular when the IOC put a term to the requirement of amateurism for participants to the Olympic Games (1981) and later eliminated the ban on the commercial use of the Olympic Games symbols (1986). Since then, international sporting federations adopted expansion strategies, attracting sponsors and media outlets, with the goal of increasing the number of affiliated national federations, in order to reach a truly global dimension and a global audience. In 2011, the International Volleyball Federation had 218 affiliated national federations, basketball counted 211, 210 for athletics, 204 for football, 190 for tennis and amateur boxing, 186 for table tennis, 179 for judo, 176 for swimming and 169 for cycling.⁷⁷ The number of national Olympic committee members in the IOC increased from 7 in 1900, to 46 in 1936, to 130 in 1972 and 202 in 2004.

⁷⁴ W. ANDREFF, “The Correlation between Economic Underdevelopment and Sport”, *European Sport Management Quarterly*, vol. 1, No. 4, December 2001, pp. 251-279.

⁷⁵ W. ANDREFF, “Sport in developing countries”, in: W. ANDREFF, S. SZYMANSKI, (eds.), *Handbook on the Economics of Sport*, Edward Elgar, Cheltenham 2006.

⁷⁶ W. ANDREFF, “Pistes de réflexion économique”, in: D. OSWALD, (ed.), *La nationalité dans le sport. Enjeux et problèmes*, CIES Éditions, 2006.

⁷⁷ J.-F. BOURG, J.-J. GOUGET, “Économie du sport”, *Repères* n° 309, La Découverte, 2005.

H. The Worldwide Development of the Economy of Professional Sports Underlying the Globalisation of Sports Events

The economic globalisation of professional sports is covered by the globalisation of sports events. The American closed league model and the European open league model are spread out in different geographic regions. In open leagues, the ultimate objective of the main clubs is to reach the highest level of competition, European or international, and this transformed these clubs into multinational or transnational corporations.⁷⁸ *The labour required for the production of a professional football match includes players as well as organisation in the broad sense – coaches, fitness trainers, sports managers, administrators and club presidents. A growing fraction of these professionals and players in particular, are recruited on a worldwide market, and the labour force of the large European football clubs is multinational. Among the large football clubs, not a single one of them is made up of only one nationality. Part of the labour force is made up of immigrants – of high qualifications and great talent – and this phenomenon does not only concern famous top quality players. The recruitment of coaches in professional sporting clubs is also gaining an international character.*

The financial assets of certain clubs are now held by foreign owners. For example, the Chelsea Football Club was bought in 2003 by a Russian oligarch, Roman Abramovitch and Manchester United was bought in 2005, for one billion Euros, by American tycoon Malcolm Glazer. Liverpool Football Club was bought in 2007, for 715 million Euros, by two Americans, Tom Hicks and George N. Gillett, who also own three basketball and ice hockey franchises in North America. The Portsmouth Football Club, bought by Russian magnate Alexandre Gaydamak, and the Fulham Football Club, owned by Egyptian investor Mohammed Al-Fayed, as well as Paris Saint-Germain, bought by a Qatari sovereign fund, also attests of the globalisation of the ownership of large clubs. In the English Premier League, thirteen out of twenty clubs belong to non-English owners.

There is however, a limit to the transnationalisation of the property of European football clubs. The multiple ownership of a club – as is the case with Roman Abramovitch, who owns shares in the British club Chelsea and in CSKA Moscow – remains an exception, especially since it is forbidden in certain countries such as France. Although this prohibition is contrary to article 63 of the Lisbon Treaty, which prohibits restrictions on the movement of capital between Member States, the European Commission admitted the validity of the UEFA regulation aimed at protecting the integrity of interclub competitions and the independence of clubs. This regulation allows the exclusion of a club from UEFA competitions if one person is in a position allowing them to exercise influence on the management of another club, including a shareholder position.

⁷⁸ W. ANDREFF, "Les grands clubs de football : des firmes transnationales", *Questions internationales*, No. 44, July - August 2010, pp. 50-57.

The financing of the large European football clubs is also becoming globalised. Two financing models can be distinguished: the first prevailing in European professional sports until the 1990s, and the second emerging towards the end of the 1990s, first in European football – in particular in the five main European leagues (Germany, Spain, France, Italy, United Kingdom), where it is now characteristic of the largest clubs.⁷⁹ The second model tends to spread to other sports that become explicitly professionalised (cricket, basketball, rugby, handball). In the first model,⁸⁰ club finances are mainly fuelled by spectators, through ticket office gains. These are followed by public subsidies, private donations and member contributions. A third source of financing that gained momentum during the 1970s was added to the first two, and it consists of sponsorship revenues. However, during that period, revenue obtained from television broadcasting rights constituted a minimal part of the financing (0% in 1971 and 1% in 1981 for first division French football teams). Finally, these sources of funding are local (spectators and local sponsors, local communities) or national.

The second funding model that appeared in large European football clubs during the 1990s and 2000s can be called "MMMMG." The primary source of funding is currently found in media, in particular, television broadcasting rights, but also the takeover of certain clubs by television channels. The second source of funding is made up of magnates such as Joe Lewis, owner of the ENIC group controlling the Glasgow Rangers, Vicenza, Slavia Prague and AEK Athens FC. These businessmen delegate the task of managing the clubs to professional managers. The third concerns the development of merchandising, which made up 34% of Manchester United's revenues in 1998. The final source of funding is the markets. Some clubs specialise in the training of young players and later earn revenues – an added value – from the transfer of these players on the global market where talents of professional footballers are exchanged. Other clubs relied on the capital market by transforming into joint stock companies and introducing their shares into the market, although this type of funding did not work as well as they were expected to for reasons that were clearly explained.⁸¹ Consequently, the modern funding model is becoming more global. There are no more automatic or necessary links between the nationality of a large football club, that of television channels that broadcast its matches, that of the magnate interested in investing in the club, that of the bank granting it credit or the players on the field. This globalisation of the funding of clubs obviously raises the question of links between the valorisation of the clubs it promotes and the risks of manipulation of competitions. Although this issue is rarely addressed, recent reflections on competitive intensity, in the context of studies on competitive balance, suggest that the issue of the increased risks of manipulation of sports competitions is fully present there.

⁷⁹ W. ANDREFF, P. STAUDOCHAR, "The Evolving European Model of Professional Sports Finance", *Journal of Sports Economics*, vol. 1, No. 3, 2000, pp. 257-276.

⁸⁰ In French called SSSL (*spectateurs, subventions, sponsors et locales*), to identify the sources of financing coming from spectators, subsidies, sponsors, and locals.

⁸¹ M. AGLIETTA, W. ANDREFF, B. DRUT, *Bourse et Football, Revue d'Économie Politique*, vol. 118, No. 2, 2008, pp. 255-296.

Competitive intensity can result from many factors: local derbies, old disputes between teams, stake of a European selection, etc. The study here is not directed on *ex-post* results but on the clubs' *ex-ante* investment strategies concerning sporting talent and in the situation of uncertainty of sporting results.⁸²

The main sponsors who invest in football are transnational corporations. The list of those sponsoring European championship football clubs, in particular those that are qualified to participate in the UEFA competitions, are renewed every year. There is therefore no need for them to be of the same nationality as the sponsored club, as was the case for several decades before the globalisation of the football economy. Sponsors then broadcast advertising messages associating the name and image of the club to their products and in this way contribute to the worldwide dissemination of the notoriety of the football club. These sponsors are more interested in increasing their notoriety and respectability than they are with realising economic gains.⁸³

A television channel having acquired exclusive broadcasting rights to a European football competition covers part of its expenses by assigning the broadcasting rights for a match or excerpts of the match to other television channels. European level matches are thus always transmitted in at least two countries. Furthermore, as the final game of the competition gets closer, the number of interested channels of different nationalities increases and the broadcasting becomes more global. The matches of the final phases of the UEFA Champions League are broadcasted in practically all European and non-European countries. The English Premier League, where the most spectacular clubs operate, is transmitted in 200 countries, and generates an audience of one billion spectators.

Under some aspects, the management of a European football club resembles that of a transnational firm. Such a club necessarily possesses European or international logistic capacities, in order to travel for games played in other countries. This leads the club to proceed to a geographical fragmentation of its value chain⁸⁴, since its supply of players partly comes from abroad, as well as the production of its most important matches in the European competitions. As to image rights, these are broadcasted all over the world by sponsors and television channels having acquired broadcasting rights. The management of human resources is faced with particular issues linked to the expatriate or immigrant status, and sometimes citizenship applications. *The management of the global image of the club requires an adapted communication strategy. The accounting management of a large football club is, on the other hand, a more secretive matter, or less transparent than that of most transnational firms.*

⁸² See notably the article of J.-J. GOUGUET in: "Intégrité des compétitions sportives," Dalloz, Juris Éditions, 2014, pp. 1-15.

⁸³ See for example the cases of Gazprom, Qatar Foundation, or Asian betting operators in the English Premier League. See *infra* Part 2, Title 1, Chapter 1, Section 1, § 3.

⁸⁴ The stages that determine the capacity of an organisation to obtain a competitive advantage, see M.-E. PORTER, *L'avantage concurrentiel des nations*, InterÉditions, Paris, 1993.

Some clubs practice a “reasoned recourse” to corruption – as do some multinational corporations trying to gain access to the markets of developing countries and transition economies – under various forms: slush funds, bribes, manipulation of accounting books, forgery and falsification of records, misappropriation of corporate assets, misuse of funds by false invoices, fictitious loans to players, occult fees paid to players’ agents during transfers, moving funds to tax havens, bribes paid to the opposing team’s players, giving gifts to referees, money laundering. According to the French Ministry of Justice’s central service for the prevention of corruption, risks of “using sports as a vehicle for money laundering are multiplying”.⁸⁵ The main methods used are contracts for image rights, the use of multiple intermediaries when transferring players, buying phantom players, salaries transformed into travel expenses, the sale of fictitious tickets (surpassing the stadium’s maximum capacity) and paying off a club’s debts in exchange for the purchase of good players at low prices.

In response to these abuses, UEFA financed, at the European Union’s initiative, the establishment of a report which led to recommendations in 2006. Its recommendations were further developed in the White Paper on Sport published by the European Commission in July 2007, which calls, in particular, for a greater involvement of European institutions in the fight against corruption and money laundering in the sporting domain. The “Pierre-de-Coubertin” action plan⁸⁶, aimed at implementing the Paper’s recommendations, should however achieve a delicate balancing between the compliance with the subsidiarity principle and the autonomy of organisations.⁸⁷ The Council of Europe has also recently started getting involved in the fight against corruption in sports.

I. The Absence of a Global Accounting System for the Economy of Sports and Worldwide Efforts of Compiling National Accounts for Sports

Lastly, there is no global accounting of the economy of sports, nor is there a global compilation at the UN level of national accounts on sports. This is not a requirement for UN Member States and the overwhelming majority of States do not have any measure of the economy of the sports sector, except for the world’s most developed countries.⁸⁸ This is a paradoxical situation when one takes into account the globalisation of the sports economy due to the development of an economic sports sector in practically all the countries of the world and the global extension of the main sports markets during the last two decades.

In the absence of an accounting of sports on the global level, the information available is the product of rough estimates (guesstimates), issued by the professional sphere itself and disseminated by the press.

⁸⁵ N. PONS, *Cols blancs et mains sales*, *op. cit.*

⁸⁶ 11 July 2007 (SEC), 2007, 934.

⁸⁷ “The White Paper on Sport provides for a certain number of measures that the Commission will have to implement or support. Together, these measures fall within the “Pierre de Coubertin” action plan which is aimed at guiding, in the coming years, the Commission’s activities linked to sport while taking into account and complying with the subsidiarity principle as well as the autonomy of sports organisations”, p. 2.

⁸⁸ See *supra*, Part 1, Title 1, Chapter 1, Section 1, § 1.

The estimates for 2006 were as follows:⁸⁹

- Global market of sporting goods and services: €600 billion.
- Global market of football (goods and services): €270 billion.
- Global market of sporting goods: €180 billion (€200 billion in 2007⁹⁰).
- Global market of televised broadcasting rights for sports: €60 billion.
- Global trade in sporting goods: €30 billion in 2005. This is the only number established on the basis of reliable statistical data.⁹¹
- Global market of sports sponsorship: €22 billion.
- Global market of doping: €6 billion.

Estimates in 2011:⁹²

- Global market of sporting goods and services: €650 billion.
- Global market of football: €280 billion.
- Global market of sporting goods: €200 billion.
- Global market of live sports transmissions: €32 billion.
- Global market of sports sponsorship: €26 billion.
- Global market of merchandising: €14 billion.
- Global market for doping products: €30 billion.
- Global market of online bets: €200 billion (global amount of bets).
- Estimate of the global market of illegal sports bets: €800-1000 billion.

A rough estimate of the global economy of sports would amount to €800-900 billion in 2011 (not including the parallel sports betting market), thus making up between 1.7% and 1.8% of the same year's GDP.

All these numbers being "guesstimates" not based on national rules of accounting, except for the global trade in sporting goods, and should be considered as more or less meaningful estimates, and not as precise and reliable numbers. They provide an idea of the size of the sports sector in the global economy.

§ 3. Interactions between the Sports Markets and their Specificities⁹³

The various interactions between sports markets constitute the sports industry or sports sector within the national economy. These interactions can be represented as an economic circuit forming the sports industry (Figure 1).

⁸⁹ W. ANDREFF, *Mondialisation économique du sport*, De Boeck, Brussels 2012.

⁹⁰ According to the World Federation of the Sporting Goods Industry.

⁹¹ M. ANDREFF, W. ANDREFF, "Global Trade in Sports Goods: International Specialisation of Major Trading Countries", *European Sport Management Quarterly*, vol. 9, No. 3, 2009, pp. 259-294.

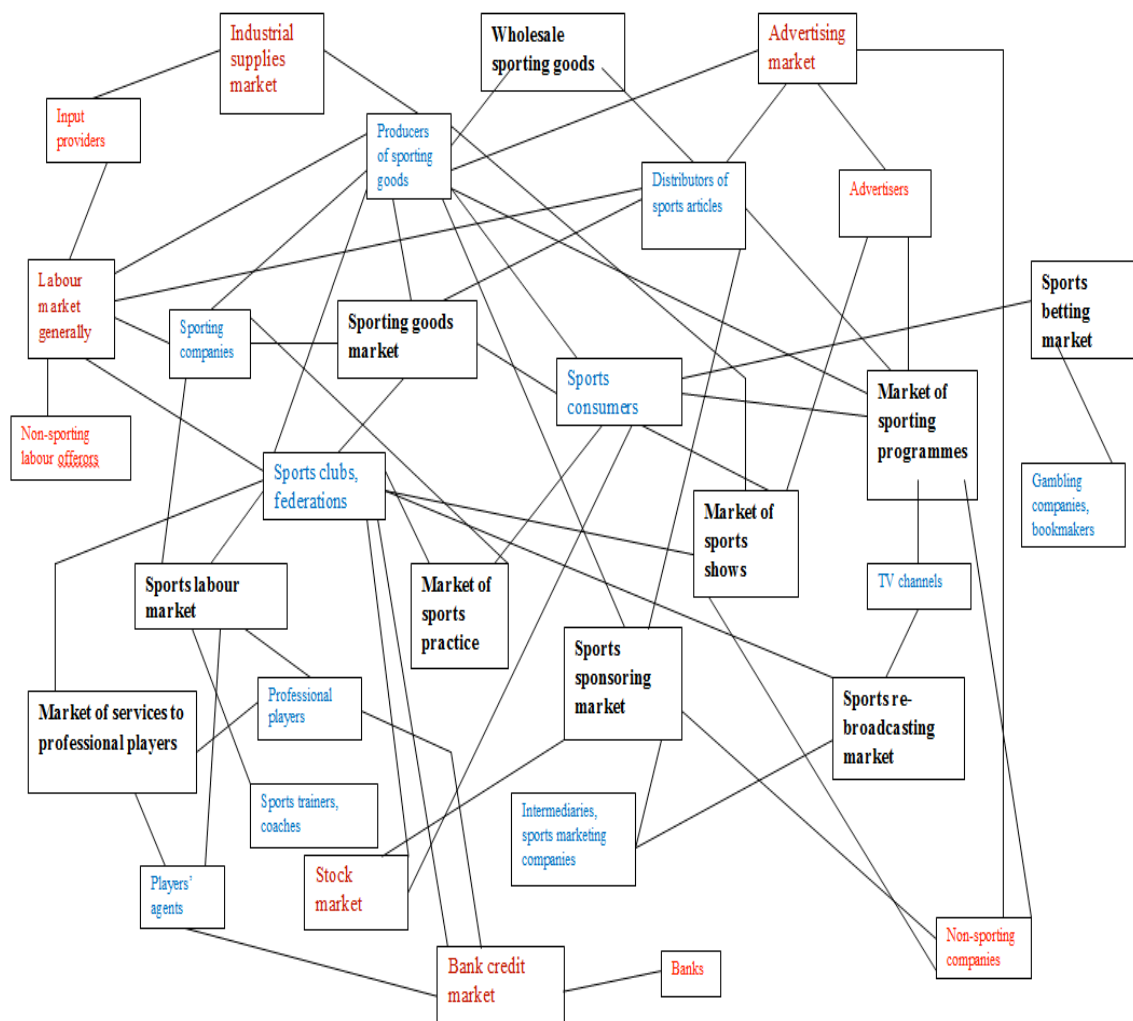
⁹² W. ANDREFF, *Les enjeux stratégiques du sport: mondialisation, globalisation, régulation*, Colloque international : "Sport et développement des territoires: enjeux, perspectives et attractivité," CREDDI-LEAD, Université des Antilles et de la Guyane, Cayenne, 5 June 2013.

⁹³ The analysis of the sports markets and their interactions presented in this report is largely influenced by W. ANDREFF, *Mondialisation économique du sport. Manuel de référence en économie du sport*, De Boeck, 2012.

An exhaustive presentation of all the relationships between the sports markets (these markets are shown in black in Figure 1), or between these markets and other markets not related to sports economy (shown in brown) would be an extremely heavy task⁹⁴. Transactions executed by each group of stakeholders (professional players, players' agents, etc.) with the various markets with which the group entertains relations, are materialised by black lines between cells in Figure 1; and each has a precise significance provided in the annex.

The phenomenon of the manipulation of sports competitions would however remain incomprehensible without a presentation, however succinct, of the main sports markets. "Temptations" and "opportunities" for manipulation originate from the interactions of these markets.

Figure 1 – The Economic Circuit of the Sports Sector⁹⁵



⁹⁴ A detailed analysis can be found in: W. ANDREFF, *op. cit.*, pp. 55-240 and pp. 358-407.

⁹⁵ W. ANDREFF, *op. cit.*, p. 56.

A. The Market of Sports Practice

Although this market is not globalised, it plays a central role since, in its absence, it would be difficult to imagine the development of a sports economy. In fact, this market fills the demand of a country's population by offering a diversity of sports disciplines to practice, in various contexts: indoor or outdoor, in sports facilities (stadiums, arenas, *etc.*), converted sites or in the great outdoors, in competitions or for leisure. Two segments of the market of sports practice should be distinguished: the associative segment and the commercial segment. In the former, the offer of sports practice emanates from sporting associations and clubs and can be accessed by obtaining a membership and a licence. In the latter, the access to the practice of a sport can be acquired for an entry price or a membership in a for-profit facility or a commercial structure (health and fitness clubs, aqua gym classes, *etc.*). The two segments of this market operate according to different economic models.

1. The Commercial Sports Segment

The commercial sports segment is a competitive market in which the offeror (fitness club, *etc.*) holds a local or special monopoly position, since the closest fitness club is at a certain distance from another, which would involve using a means of transportation and paying for it; and this is true for all the other fitness clubs distributed across the national territory. An economic analysis defines such a situation as a market of monopolistic competition with a special differentiation of the product (or service) offered. The price is fixed at a higher level than in the case of a "pure and perfect" competition (a fully competitive market) allowing each business to extract a monopolistic competition income. This is explained by the fact that the price of commercial sports is significantly higher than the price of associative sports, as well as the fact that this price is different when comparing various fitness clubs, and this is linked to the demand in its place of establishment (for example, there are virtually no fitness clubs in rural areas). However, the price is lower and the benefits are inferior in the context of a monopolistic competition than in the case of a monopoly (prices and earnings in the case of a monopoly), each offeror being somewhat subject to the competition of offerors in the same geographical area.⁹⁶

2. The associative Sports Segment

Sporting associations allow enthusiasts to use their infrastructure and their sports facilities at a price that is generally lower than if these associations were operating on a fully competitive market. However, it cannot be said that they are not subject to any competition since they offer, on the market, similar, or at least substitutable services. But these associations are financially assisted or subsidised by transfers from high levels of the sports movement (national federation, regional league), by para-budgetary funds (such as the CNDS in France) or by municipal subsidies.

⁹⁶ In technical terms, the services offered by various fitness clubs scattered in space are substitutable, but in an imperfect manner, because of the costs of transportation. Services offered by a monopoly, by definition, have no substitute.

This reasonable cost attracts a higher number of enthusiasts than if they offered their services for a real competitive market price, *a fortiori* a monopolistic competition price as is the case in the commercial segment. Besides, this is the aim of sporting movements and municipalities, which is to offer “sports for all”. This subsidising is not affected by national (or European) competition laws, since it is accepted that the practice of sports has significant external positive effects on education, health, discipline, well-being, and, in principle, the dissemination of morals and ethics (in sports).

From a perspective of its interactions with the other sports markets, the market of sports practice plays a crucial role since it provides them with their principal “raw material” – athletes – whose talents are detected and nourished in clubs and associations where they are trained and educated. Its interaction with the market of athletes is of a direct character, since athletes almost always practice the sport in associations before becoming professionals. The market of sports practice interacts with the market of sports events when sporting associations attract spectators to their competitions and performances, sometimes depending on their position in the sports hierarchy. Its interaction with the sponsorship market is currently the rule, since even the smallest sporting associations obtain the support of local sponsors. Lastly, most sports associations provide their members with sporting goods (jerseys, shoes, *etc.*) which are either given away by sponsors or bought on the sporting goods market.

B. The Market of Sports Events

The market of sports events is defined as the meeting point between, on the one hand, an offer of sporting events (to be watched) in a stadium or other defined sporting site,⁹⁷ and on the other hand, a demand from supporters principally (including some subscribers) and other occasional spectators. The properties of this demand and the competitive nature of the offer are at the same time subject to analysis and debate among economists.

Interactions between the market of sports events and the market of sports bets are numerous, particularly because of the uncertainty of the result of the competition and the process of identification, which are the very essence of the sporting event.⁹⁸

⁹⁷ Otherwise, there would be no way of charging a price for the event, as is the case of the Tour de France, for which spectators on the sides of the roads do not pay an entry price; in this case, strictly speaking, there is no market involved.

⁹⁸ See notably, P. YONNET, *Huit leçons sur le sport*, Bibliothèque des sciences humaines, NRF, Gallimard, Paris, 2004, pp. 61-78. For example, in the quarterly analysis of the online betting market in France for the second 2014 quarter, ARJEL notes that “The excitement created by the FIFA World Cup has in fact attracted more than 62 million Euros worth of bets on the first three weeks of competition (group stage), *i.e.* almost as much as on the entire 2010 FIFA World Cup.”

Regarding the demand for sporting events, its principal determining factors found in economic publications are: 1/ spectators' tastes and preferences affected by their age, sex, profession, income, past habits and experiences; 2/ the absolute price of the sporting event and the price of transportation in order to reach the event's location; 3/ the income of supporters and other spectators; 4/ the price of other recreational offers or events that could potentially draw spectators (or the relative price of the sports event), if there is substitutability; 5/ the expectations of supporters as to the evolution of the price of tickets (this explains the demand for memberships); 6/ the size of the market approximated on the basis of the population of the city where the sporting association offering a sporting event is located – or the catchment area of this sporting event, which could spread to a whole department or region; and can therefore be approximated on the basis of the regional revenue; 7/ the qualities, whether related or unrelated to the sport, of the event; 8/ potentially the economic conditions, as well as the local rate of unemployment or the existence of an economic crisis. The absence of hooligans and violence in the stadium can also be added as a factor.

An analysis of the elasticity of the demand for sporting events does not give converging (econometric) results. Studying its elasticity in relation with the income of spectators allows a determination of whether the sports spectacle is a normal good (elasticity-income value of 1), a luxury good (elasticity superior to 1) or an essential good (sometimes called "inferior good", where the elasticity is inferior to one or equals 0) satisfying the fundamental needs of an individual. The results found are mixed. From a consumer's point of view, and the elasticity-income of the value of their demand, some sports are closer to being considered as a luxury good (American professional basketball); baseball being considered, rather, as a normal good⁹⁹, the same as English football. French football would be considered as an inferior good.¹⁰⁰

An analysis of the demand's elasticity-price value indicates whether a variation in the price of entry tickets causes an identical or more or less proportional variation to the increase/decline of the price. Most studies on the subject¹⁰¹ show that the demand for sports events is inelastic in relation to price: the number of spectators flocking to the stadium is barely, if not entirely unaffected by a price increase of tickets. Supporters seem to be more affected by other characteristics of the sporting event: its quality, the comfort of the stadium, the goods complementary to the sporting event (drinks, merchandising products, transportation services to the stadium, etc.).

⁹⁹ J.-J. SIEGFRIED, T. PETERSON, "Who Is Sitting in the Stands? The Income Levels of Sports Fans", in: W.S. KERN, (ed.), *The Economics of Sports*, Kalamazoo, MI:W.E. Upjohn Institute for Employment Research, 2000, pp. 51-73.

¹⁰⁰ J.-M. FALTER, C. PERIGNON, "Demand for Football and Intra-match Winning Probability: An Essay on the Glorious Uncertainty of Sports," *Applied Economics*, 32, 2000, pp. 1757-1765.

¹⁰¹ W. ANDREFF, *Mondialisation économique du sport. Manuel de référence en Économie du sport*, De Boeck, Brussels 2012.

However, when it is possible to distinguish between subscribers and other less regular spectators,¹⁰² it becomes evident that the elasticity-price value for less regular spectators is higher than it is for regulars. This insensitivity to prices for regulars is accentuated when the price of the subscription includes a discount when compared to the price paid at the ticket office.

The offer of sporting events is monopolistic in general. Every sports event organiser has a local monopoly, and sometimes a monopoly on a larger scale, whether for national or European competitions – there is only one FC Barcelona, one Paris Saint-Germain, one Bayern Munich, *etc.* –. To use a competition law vocabulary, the events offered by each of these clubs on the sporting events market is rarely substitutable. This local monopoly is a frequent cause of imbalances on this market. When an organiser offers a sporting event for which supporters expect an exceptional quality, the quantity of tickets sought exceeds the stadium's capacity (and, in consequence, the offer for tickets), creating a situation of excess of demand. This is the main cause of a black market for entry tickets for highly anticipated (by supporters and spectators) sporting events. The local monopoly from which the organiser of the sporting event benefits also allows this organiser to adopt a typical monopoly strategy, which is a price discrimination between spectators. For a same sporting event, seats in a same stadium are sold at different prices, even if this difference is in part explained by the objective or subjective quality of the seats (standing, seated, covered). This price discrimination is also intertemporal, since prices are higher for exceptional games (gala matches or derbies).

The situation of local monopoly of the sporting event organiser, when combined with a low quality of events (matches) offered creates a problem of excess of offer – which is, in fact, global. The quality of a match strongly depends of the balance of powers present; sports economists have developed the concept of competitive balance to account for the *a priori* balanced nature of the competitiveness of the teams which should make a match very attractive to spectators. However, in a championship, all through a season, it is impossible that all matches will be balanced, precisely since some teams have good rankings (strong teams), and others have low rankings (weaker teams). In theory, some matches are not very attractive, when the victory of the leader of a championship against a low ranked team is almost certain – there is little uncertainty regarding the result. Such matches will be played in stadiums with few spectators, underlining an excess of the offer of the sporting event compared to the stadium's capacity. Such matches are not uncommon, between a third and half of the total games in national football championship, especially towards the end of the season when the fate of most teams is already known. The increase in the number of such matches reflects a global excess of offer (by the football league) of sporting events of an insufficient quality. This excess of offer is inevitable, since each team has to play against all the others during the season, regardless of their ranking.¹⁰³

¹⁰² R. SIMMONS, "The Demand for English League Football: A Club-level Analysis," *Applied Economics*, 28, 1996, pp. 203-240.

¹⁰³ Under certain conditions, the organisation of competitions sometimes prevents matches of this type from being manipulated. See *infra* Part 2, Title 1, Chapter 3, Section 1, § 2, A. 1, "Collusion - Risk Factors and Contest Design".

However, this analysis must be nuanced by the observation of opposite situations: in fact, it is not uncommon for supporters to enjoy watching their team win, and for them to gladly go to the stadium although the chances of their team winning are very high (typically, in Neuchâtel, it can be seen that the number of spectators increased when the team climbed in the rankings, and that matches played against weaker teams attracted a lot of people, the supporters being excited at the prospect of "seeing some goals"!). Similarly, in England and in Germany, people go to games regardless of the rankings of the teams ("Wil Samstag ist", because it is Saturday). Also, despite a clear competitive imbalance, the sporting event remains as attractive which means that the interest of the competition is elsewhere.¹⁰⁴

These issues are similar to the ones caused by the so-called "no-stakes" game, *i.e.* where the sporting challenge is deemed insufficient. In this matter, the positions have evolved, reflecting in fact the complexity of this issue. Thus, after banning bets on no-stakes matches in rugby, football, and basketball in the last months of 2012, and following the case of suspected bets placed by players of Montpellier or their entourage in the Cesson-Montpellier handball match, ARJEL extended this prohibition to volleyball and handball at the beginning of 2013. Then, as a second step, the new president of ARJEL Charles COPPOLANI, in an article published in *Le Monde* newspaper, supported a lifting of this ban.¹⁰⁵ It seems that the argument of the loss for online betting operators who can no longer offer ratings on many end-of-season football games has paid off (see the position of the leader of PSG few days before the end of the 2013/2014 Ligue 1 season or of Bayern Munich, already crowned champions of Germany, in the German championship), as did the argument that bettors can always turn to illegal operators.¹⁰⁶

The sporting events market is, on the one hand in constant interaction with the labour market of professional athletes, which, upstream, provides it with the labour force possessing the required talents to produce high quality sporting events and attract spectators.

¹⁰⁴ The notion of competitive intensity introduced above is relevant here. See M. GERRARD, B. KRINGSTAD, "The Concepts of Competitive Balance and Uncertainty of Outcome," *IASE Conference*, Athens, 31 May - 2 June 2004 and *The Economics and Management of Mega Athletic Events: Olympics Games, Professional Sports, and Other Essays*, (ed.) G.T. PAPANIKOS, Athens Institute for Education and Research, Athens 2004, pp. 115-130.

¹⁰⁵ *Le Monde*, 12 April 2014. "La France va lever l'interdiction de certains paris sportifs," P. LEPIDI, D. COSNARD.

¹⁰⁶ On 29 September 2014, one could read the following on the site of ARJEL under "List of events providing a basis for sporting bets. Competition categories": "The games of a championship day that became no-stake games before the first game of this championship day must be removed from the offer. The bets registered since the end of a match of any championship or competition whose results made the game on which they apply a no-stake game must be reimbursed and not executed. In the event of a combination bet, as an exception to the preceding rule, operators can provide that the bet on a match that became a no-stake match, regardless of the outcome of this match, will not have any effect on the execution of the combination bet".

On the other hand, the sporting events market interacts with three downstream markets. First, the sports media market, principally televised (but also covered by radio broadcasts and the sports press). The sporting events market provides the sports media market with sporting events to be broadcasted through the payment for broadcasting rights. This relationship is followed by the sports betting market whose input consists in sporting results the anticipation of which allows for the participation of bettors interested in sports. The sports sponsorship market could interact, although not necessarily with the market of sporting events.

An interaction exists when sponsors use, in exchange for payments to the organiser of the sporting event, advertising space available in the stadium, but also through the means of a naming contract; in which case the stadium would be named after the sponsor in exchange for the payment of naming rights to the organiser of the sporting event and/or to the owner of the stadium.

These interactions, as well as the financial amounts in play, reach a peak during the organisation of large global sporting events: football World Cup, Olympic Games, rugby World Cup, Roland Garros and Wimbledon tennis tournaments, etc.

C. The Sports Media Market

The sports media market is, initially, the market of a by-product of sporting events; and is sometimes referred to as the market of indirect sporting events; sports are principally broadcasted via television, but also through radio and sports press. As to televised sports, the by-product has been advancing to the status of main product for two decades, since the proceeds from television broadcasting rights were higher than proceeds from ticket sales in the budgets of large organisers of sporting events. Two segments should be distinguished on the televised sports market, the market of sports programmes being situated in a downstream position in comparison with the market of sports broadcasts, the latter providing the major part of the “raw material” used by sports programmes.

1. The Sports Programmes Segment

On the sports programmes market, the retail market of televised sports, the offer of sports by television channels (companies) meets the demand of potential viewers. The relative importance of this demand is measured by the viewing rates (or market share), the ratio between the audience of sports programmes and the total audience at a given time or during a determined period. The viewing rate reacts to two variables; the price and the expected quality of the televised sports programme. Through time, the development of demand for televised sports increased due to four factors: the growing presence of television sets in households, the technological improvements brought to televised broadcasting (colour, slow-motion, by cable, satellite, digital) and the reception of television broadcasts (encoding, zapping, consoles, Internet, mobile phones, etc.), a change in the regulation of the television market and the sale of advertising slots during the broadcasting of sporting events. The new American regulation of the market came with the Sports Broadcasting Act (1961) and the deregulation of the market of sports programs in Europe dates from the 1980s.

The determining factors of the demand of televised sports programmes (econometrically tested) are the uncertainty of the sporting result,¹⁰⁷ the quality of the competitors, the presence of superstars (the best paid players) on the field, the schedules of the programmes and the preference of viewers for free programmes in comparison with paid programmes, except for those for which demand is inelastic in relation with price¹⁰⁸ – supporters.

In the first instance (from the 1960s until the 1980s), organisers of sporting events feared that sporting programmes would empty the stadiums, *i.e.* that sporting events would be substituted with broadcast sports programmes. However, this reasoning ignores the fact that the television broadcasting of sporting events (like any other product or service) can, with time, prompt viewers to go to the stadium, or even trigger a practice of sports by viewers. Thus, television would tend to fill stadiums, as is shown by the most recent econometric studies.¹⁰⁹

The importance of the offer of sports programmes is measured by the ratio of broadcasting time allocated by television channels to sports at a given moment or within a certain period, to the total of the offer of sports programmes during the same period. This offer is partly free to air on public television channels, since they are considered as a materialisation of the general right to information. However, since the deregulation of televised markets, a growing part of the offer of sports programmes has become a paid service; for instance, in France the public offer represented 100% of the sports programmes in 1968, 34% in 1988, 4% in 1999 and 2% in 2010. The private offer comes from advertised television (whose main resources come from advertising) and private subscription-based channels or pay per view, an overview of this situation having already been published.¹¹⁰

The arrival of private television channels on the market of sports programmes increased the competition and the quality of the services offered. But it also created a risk of excess offer. For instance, in France, in 2010, the various television channels offered a total of 100.000 hours of sports programmes although the year only had 8.760 hours (365 x 24, for a viewer who would be watching his television day and night). A more accurate measure of the risk of excess offer consists in comparing the growth rhythm of the viewing rates (demand) to the broadcasting time (offer) of sports programmes; in many developed countries, including the United States, it can be observed that, for some years, the demand is increasing at a slower rate than the offer. This creates difficulties for some television channels, since some programmes dedicated to sports are no longer profitable; and some channels have abandoned the broadcasting of sports and left the market of sports programmes.

¹⁰⁷ D. FORREST, R. SIMMONS, B. BURAIMO, "Outcome Uncertainty and the Couch Potato Audience," *Scottish Journal of Political Economy*, 52(4), 2005, pp. 641-661.

¹⁰⁸ R.G. NOLL, "Broadcasting and Team Sports", *Scottish Journal of Political Economy*, 54(3), 2007, pp. 400-421.

¹⁰⁹ P. DAWSON, P. DOWNWARD, "Participation, Spectatorship and Media Coverage in Sport: Some Initial Insights", in: W. ANDREFF, (ed.), *Contemporary Issues in Sports Economics: Participation and Professional Team Sports*, Edward Elgar, 2011.

¹¹⁰ C. GRATTON, H.A. SOLBERG, *The Economics of Sports Broadcasting*, Routledge, Abingdon 2007.

In the face of a potential excess of offer, most television channels are forced to specialise in the broadcasting of some sports in particular, except for football, which is broadcasted by most channels in all countries of the world. The arrival of TNT, and of new corresponding channels, does not seem to have modified, for the time being, these large tendencies (CSA, 2011), growing competition, risk of excess of offer and specialisation in sports programmes, with football always benefiting from a priority.

Some very direct interactions link the market of sports programmes to the market of direct sports events (in the stadium), since the latter is a provider of sports events that can be broadcasted with good viewing rates. Large global sporting events – Olympic Games, football World Cup and Euro, world championships of some sports disciplines, *etc.* reach top viewing rates; and they also create the largest number of interactions and cause the circulation of the largest sums between the markets concerned. The market of sports programmes is in permanent interaction with the market located immediately upstream, the market of televised sports broadcasts, which provides it with the large majority of its programmes – there are however some sports programmes that are not rebroadcasts, but these form a minority in sports programs of television channels.

Next comes the market of sports bets, which interacts with the market of sports programmes in two ways: on the one hand, the potential bettors are regular viewers, which is necessary in order for them to form predictions and make their choices for future sports bets, and on the other hand, they watch the sporting events on which they bet on television. This interaction was considerably strengthened with live betting; in fact, in order to bet during a match, it is preferable, or even necessary to follow the events through a media outlet, which is, in general, television. Lastly, the market of sports programmes can have an interaction, which is often an indirect one (and this is difficult to test with observable data) with the market of practice: a (young) viewer decides, after having seen a very spectacular sporting event, or after a series of sports programmes dedicated to a same sporting event, to start practicing the sport that charmed him on the small screen.

2. The Televised Sports Broadcasting Segment

The sports broadcasting market involves the presence of organisers of sports events on the offer side of broadcasting, and television channels on the demand side, whereby the latter request the right to broadcast a sporting event and are willing to pay a financial amount in order to obtain this right. The offer is always monopolistic: the IOC has a monopoly on the offer of broadcasting rights of the Olympic Games and maintains this monopoly by legal and commercial exclusivity clauses in connection with the use of the Olympic symbols; FIFA has a monopoly in granting broadcasting rights for the football World Cup, UEFA has a monopoly for the football Euro, the Champions League, the UEFA Europa League, the European Under-21 championships, the European women's competitions, *etc.*, the English Premier League controls first division matches in England, the French Football League controls League 1 and League 2 matches, and so on.

Such a monopoly should, in principle, be subject to recourse on the basis of anti-monopoly competition regulations, especially since each league organising sporting events tends to operate as a cartel: it maximises its revenues (profits) and redistributes them among its members (for example between English Premier League clubs or between those of French League 1 and League 2).

This cartel and its monopoly position are occasionally contested, sometimes by large clubs that are not satisfied with the part they received in the redistribution of the league's revenues, and other times before an entity in charge of ensuring compliance with competition rules (anti-trust agency such as the *Bundeskartellamt* in Germany, or a political European competition entity). However, the monopoly on the offer of sports broadcasts persists, the leagues arguing that a coordination between all the league's teams (and matches) is necessary for its survival and its ability to offer high quality matches with a degree of uncertainty as to the result; as to the IOC, FIFA, and UEFA, these organisms simply forbid anyone from organising a sporting event similar to theirs, and undertake appropriate legal, commercial, financial and lobbying actions in order to prevent such things from happening.¹¹¹

On the demand side, the televised sports broadcasting market is far from being perfectly competitive, but since the deregulation dating back from the 1980s, there is a real competition between television channels for broadcasting rights linked to the same sporting event. Although competition is intense between the relatively large number of television channels, this market is a perfect example of a monopoly, since it faces the organiser of this sporting event as the only offeror for each event. If the number of stations were limited, or in tacit collusion (or simply communicating), such a market would be a monopsony or "oligopsonistic" monopoly. It is all the more so since television channels regularly undertake typical oligopsony strategies (following the strategy of the market leader, implicit sharing of the market, horizontal or vertical integration) that could lead to the merger of two of them (this was the case of Stream and Telepiu in Italy, Canal Satellite and TPS in France, *etc.*).

In all cases, offer tends to impose its conditions on transactions and to the value of broadcasting rights. For this purpose, the organisers of sporting events put their "products" (for example, English Premier League football matches) up for auction to distribute them between competing television channels. Each organiser (each football league, the IOC for the Olympic Games, *etc.*), benefiting from a monopoly and exclusivity for the offer of its product forces the television channels to get into a bidding process in order to obtain the right to broadcast the EPL championship, the Olympic Games, *etc.*

¹¹¹ In 1999, Mediapartners tried to launch a European Football Superleague which would have competed with matches between European clubs organised by UEFA, and this attempt led the latter to counter with various threats, but specifically with appropriate financial measures (a revaluation of financial gains obtained by clubs that were qualified for its competitions) in order to defeat Mediapartners' initiative, which, indeed, failed.

An economic analysis shows that these bidding processes usually lead to the “winner’s curse, *i.e.* the fact that the highest bidding television channel will have paid a price that is too high and will therefore find itself in a shortfall on its acquired sports programmes.¹¹² Some television stations even went bankrupt after a resounding success (but which was too costly) in an auction for the granting of broadcasting rights for sports events (ITV Digital, Kirch Media). As a result, the balance of the market of televised sports broadcasts is precarious and unstable, and subject to frequent strategy changes of television stations and to tough auctions under pressure from the monopolist organiser of sports events. This pressure is more effective when the competition is more intense on the demand side (for example, the entry of Beln on the football and rugby markets in France increased competition by competing with Canal+ for a market share detained by the latter).

The sports broadcasting market interacts with the sports programmes market since these two are organically linked: the same television channels constituting the demand on the former are at the same time the offerors on the latter. A strong interaction takes place between the sports broadcasting market and the sports sponsorship market.¹¹³ A sponsor is never more and better exposed to the public than when the club or the athlete of a sporting event it is sponsoring takes part in a sporting event broadcasted on the television. The amount of sponsoring contracts is very sensitive to the fact that the athlete, the club or the sponsored event is likely to be frequently broadcasted on the television. The relationship of the sports broadcasting market with the sports events market is very indirect and only plays a part if there is a substitution effect such as the one mentioned above.

D. The Sports Sponsorship Market

On the sports sponsorship market, demand for sports image rights emanates from potential sponsors in the face of an offer of image rights provided by athletes, sports clubs, sporting events or organisers of large sporting events. This is a clearly competitive market, since any athlete or club can conclude an image rights and sponsoring contract with a firm producing or marketing sporting goods and even with a firm in any industry. Once, most sports sponsors were recruited in the sporting goods industry.¹¹⁴ However, this was not the case in the recent decades, for example the list of the main sponsors of the Olympic Games does not include any sporting goods firm. The offer of image rights is chosen by the sponsors depending on whether they’re looking for a high media exposure and are ready to invest substantial financial amounts or, as a local sponsor, looking to market their products or brand in a limited geographical area; their financial input will thus be limited, or substituted by providing sporting goods and equipment.

¹¹² W. ANDREFF, “The winner’s curse in sports economics”, in: O. BUDZINSKI, A. FEDDERSEN, (eds.), *Proceedings of the 5th Conference of the European Sports Economics Association*, Esbjerg 2014 (to be published).

¹¹³ And broadly speaking, with the whole advertising market, whose main part is outside the sports sector of the economy.

¹¹⁴ W. ANDREFF, J.-F. NYS, *Économie du sport*, collection “Que sais-je?”, n° 2294, Presses Universitaires de France, Paris 2002.

An economic analysis of the sports sponsorship market is not very developed¹¹⁵ since this market presents very few particularities when compared to the rest of the advertising market, and, more generally, to numerous service markets. The two subjects studied by economists are the difficult evaluation of the economic impact of sports sponsorship and a problem of free-riding. In fact, every firm (potential sponsor) that can seize the opportunity of benefiting from the image of sports without paying an image right is strongly incentivised to do so. Such a strategy is called ambush marketing. It consists in showing a logo or brand on television broadcasted images (next to the official sponsors that paid for an image right) by paying a sum (which can be compared to a bribe) to an athlete, in order for him to wear shoes, glasses, a T-shirt with this “underground” sponsor’s logo – the bribe in question being a minor price when compared to image rights paid by official sponsors. A special case of this underground form could be that of the sponsoring of British Premier League clubs by betting operators active in Asia and not in Great Britain, where they have no licence.¹¹⁶

The sports sponsorship market interacts, as seen, with the market of televised sports broadcasts. It also interacts with the market of sporting goods, since firms manufacturing or marketing these products remain among the most interested in buying sports image rights (implicitly or explicitly boasting of the qualities of their products), even if their relative weight in the global demand of sports sponsorship is not what it used to be thirty or forty years ago. The interactions are direct and apparent with the labour market of professional athletes where sponsors draw on most athletes they sponsor. Lastly, for less ambitious sponsors (or sponsors with more limited financial means), the interaction is made with the market of sports practice where it is possible to find local sports clubs or non-professional athletes, as well as, possibly, corporations from the commercial sports sector seeking sponsors.

E. The Sports Betting Market

The sports betting market has been constantly changing over the last decade and several sections of this report elaborate a partial new analysis of this market¹¹⁷ (this analysis will not be exposed in this section). Economists maintain that this market can take two clearly different forms, depending on applicable legislations or regulations in one country or another. A first, traditional form¹¹⁸ is that of the public monopoly on the offer of sports bets. In the face of a fragmented demand of numerous potential bettors, the State condenses, in a public enterprise, all the options and choices offered to bettors, which receives bets, determines a fixed percentage (rate of return to bettors) to winning bettors, keeps a fraction in

¹¹⁵ Contrary to the prevalent writings on the subject of “sports management” concerning sports sponsorship that studies the different types of sponsorship contracts, the various marketing strategies of sponsors, those of the sponsored persons or entities, the adequacy of the sports images for the product or sponsor brand, and so on.

¹¹⁶ See *infra* Part 2, Title 1, Chapter 1, Section 1, § 3: “Sports Entities”. This possibility eventually moved the legislators, who then made it more difficult by means of the *Gambling (Licencing and Advertising) Act 2014*.

¹¹⁷ See *infra* Part 2, Title 1, Chapter 1, § 4.

¹¹⁸ This form is still prevalent in many countries; see *infra* Part 3, Title 1, Chapter 3.

order to cover its management fees, and gives back a determined percentage to the State, for example to a para-budgetary fund (for example, the National Centre for the Development of Sports (CNDS) in France). The opening of the sports betting market to competition, in particular foreign competition, transformed the public monopoly system into a competitive system where competing bookmakers – and other sports betting operators, in particular online betting – offer a more diverse range of sports bets. In a globalised framework, this opening up to competition can be regulated and organised by law, as was done in France in 2010, or even ignored by the law and spontaneous, and keeping in mind that regulation constitutes an answer to the drifts of globalisation. However, it must be noted that regardless of the efforts of organising and regulating competitions, a third market of sports bets, this one being of a global character, was formed, in disregard of national regulations and betting options officially authorised in various countries. But, as was shown, its financial scale is a multiple of the scale of legal markets, whether these remain within a public monopoly or are in a situation of competition. An analysis of this reality is at the heart of the rest of this project.¹¹⁹

F. The Sporting Goods Market

The sporting goods market is that on which products needed for various sports practices are sold. The demand comes from sports players – and for a small fraction of the market of professional athletes requiring high-end products. The offer comes from firms in the industry of sporting goods *via* a specialised (sports shops) or generalist distribution network.

On the sporting goods market, the demand is very segmented between a multitude of very varied products corresponding to various sports practices and with different functions: sportswear (clothing and shoes), simple objects necessary for the practice of sports (ex.: balls, skates, Ping-Pong tables), specialised instruments (ex.: rackets, skis, bicycles, surfs) and more comprehensive equipment (gymnastics equipment). The demand is segmented, first of all, by type of sports practice. Each sporting discipline creates a specific demand for sporting goods. From a demand point of view, a distinction can be made between standard commonly used articles for practicing sports in general and usable in many different sports (ex.: tracksuits, walking shoes, jogging shoes) and articles specialised in one particular sport (ex.: swimming suits, full equipment for ice hockey) and unusable for other sports practices. Complex sports articles with high prices should also be distinguished (ex.: goods for golf, motorised ultra-lites) from simpler and less expensive products (ex.: swimming suits, T-shirts, balls). Lastly, some sports practices require the use of a more technical instrument (ex.: skis, windsurfing boards, bicycles, rackets), others only requiring simple equipment – swimming, aerobics, body building, most team sports.¹²⁰ This explains the distinction between *common* sports articles and articles for *instrumented* sports.

¹¹⁹ See *infra* Part 1, Title 1, Chapter 2, Section 2, § 1.

¹²⁰ W. ANDREFF, "L'internationalisation économique du sport", in: W. ANDREFF (dir.), *Économie politique du sport*, Dalloz, Paris 1989, pp. 203-236.

On each segment of the sporting goods market, the demand is volatile, changing depending on the sporting seasons, or even during a sporting season, for two reasons. On the one hand, from one year to the next, the number of sports players can increase or decrease depending on non-economic variables (ex.: victory or defeat of national teams, the emergence or disappearance of a charismatic and famous champion of a discipline) with a positive or negative impact on the demand made to firms of the sporting goods industry. On the other hand, fashion trends affect the demand for sporting goods, in particular sportswear and sports shoes. The changes in demand are not all linked to the practice of sports, thus the purchase of sporting goods that are not used to practice sports, but because it is fashionable to have a sporty look, sporting clothes or to wear sports shoes. This demand is not only volatile, but also versatile. The factors determining the demand for sports articles are age, sex, income, the level of education, professional occupation, working and leisure hours, place of residence, the availability of sports infrastructure, fashion trends, state of health and economic conditions. Two other specific factors influence the demand in most developed countries: the rate of equipment or possession¹²¹ of individuals for each sports article and the life cycle of each of these products, keeping in mind that most sports articles are durable goods that are not consumed in a single usage.¹²²

The offer on the sporting goods market seeks to meet, and sometimes control, through advertising, the demand of consumers, and mainly but not exclusively those that practice sports. The demand being segmented and volatile, manufacturers have to adapt their products according to sports practices, and, for many of them, to specialise in one segment of the demand, such as football products, sportswear, sports shoes, winter sporting goods (large segments). Much more specialised segments are those of instrumented sports such as canoes, kayaks, surfs, table tennis, rowboats, paragliders, motorised ultra-lites, golf, rackets, snowboard, weightlifting, etc.

On the supply side, the sporting goods market is a global oligopoly, with a small number of offerors and numerous requesters. It is also a “fringed” oligopoly. On the global market, a handful of multinational companies hold, depending on the products, a 70 to 90% part of worldwide sales. This oligopoly is characterised as a “fringed” oligopoly in order to explain the following reality. When the fact that the main part of the global demand is covered by a dozen large multinational corporations is taken into account, the rest of the market shares are divided between a multitude of SMEs the majority of which only deal on the national market. This myriad of SMEs constitutes the fringes of the global oligopoly that compete with the large firms, each within its national market. A segmented demand allows small manufacturers to specialise in the offer of a particular segment on each national market, beyond the dominion of the global market by a small number of oligopolists.

¹²¹ It measures which fraction of the population owns one, two or several exemplaries of the same product.

¹²² W. ANDREFF, “The sports goods industry”, in: W. ANDREFF, S. SZYMANSKI, (eds.), *Handbook on the Economics of Sport*, Edward Elgar, Cheltenham 2006.

The oligopolistic structure of the market has important implications when it comes to the competition taking place in the presence of a volatile demand, subject to fashion trends. In a competitive industry the frequent variations of the demand cause adjustments in terms of prices and offered quantities. In an oligopoly, pricing strategies are scarcer, and when they appear, they are more often concentrated between the hands of oligopolists, each of them adapting to the price increases of the world leader of the industry or according to the prices of all the multinational corporations of the industry. However, competition by lowering prices is almost absent because it is extremely dangerous. In an oligopoly, it involves a high risk of degenerating into a "price war" that will lead to the bankruptcy and the disappearance of many oligopolists. No oligopolist is willing to frequently take such a risk.

In an oligopoly, there are no secrets concerning the strategies of one's competitors, since competition is not anonymous, and since corporations monitor each other through various means, including industrial espionage, or the use of economic intelligence services. Thus, when one aggressive oligopolist lowers its prices, the other corporations in the oligopoly immediately react with a price decrease in order to preserve their respective shares of the market. Each oligopolist will consider lowering its prices further, first in order to preserve its market share, and then, if possible, to enlarge it at the expense of the others. Price decreases are met with more decreases and oligopolists go bankrupt one after another. Because each corporation cannot reasonably hope that it will be able to offer the lowest prices, or survive a price war, oligopolists renounce, barring exceptional events, to the use of price decreases as a competition weapon. The corporation must find other strategies to respond to competition. In an oligopoly situation, they consist in an objective or subjective differentiation of products (through advertising), and in a diversification of the production towards the production of other sporting goods, or even goods outside the sporting goods industry, and by making a constant and strong effort to innovate (research and development spending, as a percentage of the sales revenue).

The distribution of sports articles is also a global fringed oligopoly with some large multinational sporting store chains and national networks of specialised stores.

The sporting goods market interacts with the market of sports practice and the labour market of professional athletes as a provider of means for practicing sports, and for professional athletes, to practise their trade in normal conditions corresponding to the latest technologies available. It also interacts with the sports sponsorship market, since the firms manufacturing and distributing sporting goods are most interested in associating sports images to their products and brands.

G. The Sports Labour Market

The sports labour market, understood as the market for the services of professional athletes is a meeting area between an offer of labour (demand for employment) on the part of high-level athletes addressed to employers, embodied by professional sports clubs, and a labour demand (employment offer) on the part of the latter. This market is internally regulated by each professional sports league in North America (collective agreements, arbitration, rookie draft, salary cap, luxury tax), completely apart from the competition between employers on the markets of other activity sectors of the American economy. The sports industry is the only branch that is strictly and centrally regulated, and even planned by the league in the economy of the United States, to such an extent that it was described as a “quasi socialist” sector.¹²³

In Europe, the labour market was subjected to several restrictive rules (such as a limited number of foreign players that a sports club was authorised to have in its team during a match) that were all called into question by the Bosman decision (December 1995). Other subsequent decisions (Malaja, Kolpak, Simutenkov) extended the Bosman precedent to other sports – Bosman being concerned with football – as well as to countries outside the European Union, as it was generalised to all African, Caribbean and Pacific countries by the Cotonou Agreements. Today, the competition on the labour offer side, between players or athletes in search of an employer, is met by a full competition on the demand side by employers in European professional sports. The result is a greater mobility, including international movements, of professional athletes, although the market is far from being in a perfect competition state, because of international networks of player transfers.¹²⁴

The price (salary) and value (transfer premium) of players vary greatly between superstar players¹²⁵ and very good players on the one hand, and other (the majority of) professional athletes on the other hand. An interpretation of this reality would be the recourse to the theory of segmentation of the professional athletes’ labour market. In a recent modernisation,¹²⁶ each of the two segments – superior and inferior, or primary and secondary – of the labour market is imbalanced. In the superior segment of superstars, an excess of demand has the effect of fixing salaries at very high levels, without any connection to the work productivity of superstar players, and of inflating the transfer premiums in bidding processes (an “arms race”) between sporting clubs possessing large budgets allowing them to acquire the services of superstars.

¹²³ W. ANDREFF, “Derives financiers: une remise en cause de l’organisation du sport”, *Finance & Bien Commun*, *op. cit.*

¹²⁴ R. POLI, *Le marché des footballeurs. Réseaux et circuits dans l’économie globale*, CIES, Peter LANG, 2010.

¹²⁵ The salaries of superstars are studied by many diverging analyses by economists, and are outlined by ANDREFF (2012), pp. 380-384.

¹²⁶ W. ANDREFF, “Building Blocks for a Disequilibrium Model of a European Team Sports League”, *International Journal of Sport Finance*, vol. 9, No. 1, 2014, pp. 20-38.

Superstars are in a situation of monopoly and exclusive rights in connection with the sale of their services (there is only one Lionel Messi and only one Cristiano Ronaldo), which are not substitutable, and put sporting clubs in heated competition until the bidding and transfer premium stages. The inferior segment of the labour market, the one involving the other players, in accordance with the empirical observation of unemployed players at the opening of the season and players forced to offer their services to clubs of an inferior division or foreign minor leagues, is in a situation of excess of offer. This forces the players concerned to make concessions on their salary and are generally paid under their work production.

In addition, this labour market is an intermediated market, meaning that players use the services of intermediaries. In fact, players rarely negotiate their employment terms themselves, and leave this to specialised intermediaries: the players' agents. In the current state of this profession, the majority of agents do not satisfy the entry requirements for this business, which are defined by FIFA (preliminary interview, posting a security, a clean record), which is one of the causes of the malfunction of this market, especially with the issue of transfers of minor players under the age of 18, strictly forbidden by FIFA – with three exceptions.¹²⁷ This is why FIFA's Executive Committee approved, on 21 March 2014, the new FIFA Regulations on Working with Intermediaries. In this context, after a long period of consultation proceedings with the various participants in professional football launched in 2009, FIFA decided to make an in-depth reformation of the framework for agents of football players. Starting from 1 April 2015, access to this profession will be more regulated. Players and clubs will be able to choose the intermediaries they want. This concerns the control of the access to this field of work, and not just its regulation. Specific criteria and certain principles will have to be complied with when choosing an intermediary. The Regulations define the minimum standards and requirements to be observed and enforced by the member associations. These Regulations will enter into force on the condition of prior approval of the necessary amendments to the FIFA Statutes by the 6th FIFA Congress in June 2014.¹²⁸

Conclusion of Section 1

The market of sports labour interacts with the market of sports practice which provides it with new recruits and new talent. It also interacts with the market of intermediaries operating in sports, first among which are the players' agents. This market also interacts with the sporting goods market, which provides it with state-of-the-art equipment for high performance athletes. It also interacts with the market of sports events since the bestselling sporting events on the market, attracting the most spectators (and television viewers) and therefore more income for the organisers of sports events, are those involving professional athletes (or highly remunerated athletes, even if they do not possess the legal status of professionals).

¹²⁷ W. ANDREFF, "Why Tax International Athlete Migration? The 'Coubertoin' Tax in a Context of Financial Crisis", in: J. MAGUIRE, M. FALCOUS, (eds.), *Handbook on Sport and Migration*, Routledge, Abingdon, 2010.

¹²⁸ See [<http://www.droitusport.com/imprimer/?id=087408522c31eeb1f982bc0eaf81d35f>].

The labour market interacts with the sponsorship market since the large majority of sports professionals have one or more sponsors on an individual basis, and through their professional club. Lastly, in principle, the labour market does not have, and should not have (under penalty of insider dealing sanctions) interactions with the sports betting market. Some recent cases analysed later on in this report, show that such occurrences are more and more frequent in transcending the limits of sports ethics, codes of conduct and even legality.

Section 2. Establishing a Legal Framework for Sports Markets

The previous section clearly demonstrated how the economic dimension of sports has become predominant, and how the sports markets were progressively organised and consolidated. Sports being included in the area of commodification, the sports markets were gradually integrated into existing economic regulations and became subject to rules normally governing economic exchanges. The present section will deal with a specific legal framework for sports markets: the European Union. This presentation constitutes the entry point of the analysis of the legal framework of sports markets in other parts of the world.

This choice can be explained, first of all, by the fact that within this context, the simplification of the sports market is taken to a further level, although sports are also taken into account in European policies for their societal and educational virtues (§ 1). Thus, sports activities and rules developed by sports organisations to regulate these activities, as far as they have an impact on the economy, are subject to treaty rules concerning freedom of movement (§ 2) as well as to European competition law (§ 3). Therefore, since no rule on sports can, *a priori*, escape this legal framework aiming at ensuring that no unjustified obstacle affects trade or free competition, rules on sports aimed at combating the manipulation of sports competitions can also be subject to control by European Union law (§ 4).

§ 1. The Context of the Regulation of Sports Activities by European Union Law¹²⁹

It is only since 2009 that the European Union is officially competent on matters related to sports. However, long before this date, European institutions had already accepted to deal with sports activities in the context of political initiatives aimed at promoting sports activities because of their societal virtues. The objective was to draw the contours of a *European sports model* (A). Sports fall directly within the competence of the European Union in their economic dimension, because of the efforts of the Court of Justice of the European Communities¹³⁰ to place sports under the umbrella of the common market (B).

¹²⁹ For a detailed analysis of the European framework concerning professional sports, see J.-F. HUMBERT, "L'Union européenne et le sport professionnel", Report No. 379, Senate, 2013, p. 80. Some of the information reproduced in this report is taken from this Senate report.

¹³⁰ Which became known as the Court of Justice of the European Union (hereinafter CJEU) since the Treaty of Lisbon of 1 December 2009.

A. The Progressive Establishment of a European Sports Policy

Since the entry into force of the Lisbon Treaty, on 1 December 2009, the European Union has backing authority in the sports domain. Article 6 e) of the Treaty on the Functioning of the European Union (TFEU) provides that the Union “shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States” in the area of sports. This competence does not allow the Union to harmonise the national legislations of Member States. Its action is limited to an initiating role with Member States that maintain control of their national policies in the field of sports. Although of a limited nature, and although currently only an auxiliary competence, this inclusion of sports in the jurisdiction of the Union, offers a legal basis for the elaboration of a real European policy of sports.

In concrete terms, article 165 of the TFEU specifies that:

- “1. The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.
2. Union action shall be aimed at (...) developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.
3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe.
4. In order to contribute to the achievement of the objectives referred to in this Article:
 - the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,
 - the Council, on a proposal from the Commission, shall adopt recommendations.”

It results from this provision that sports are approached, in the framework of the European Union, as a real societal issue, since it is closely linked to issues of education, integration and public health. This is why the European Union seeks to promote a real “European sports model”.

For nearly forty years, the law as well as the institutions of the European Union have been taking multiple European aspects of sports into account.

These efforts were in fact made well before the entry into force of the TFEU. Indeed, a declaration annexed to the Amsterdam Treaty of 1997 already recognised “the social significance of sport, in particular its role in forging identity and bringing people together.” Another declaration annexed to the Treaty of Nice of 2000 provided that sports organisations and Member States have a primary role in the conduct of sports affairs, but also recognises that:

“Even though not having any direct powers in this area, the Community must, in its action under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport and making it special, in order that the code of ethics and the solidarity essential to the preservation of its social role may be respected and nurtured.”¹³¹

In turn the European Commission, has, since 1991, shown its concern in promoting the educational and cultural aspects of sports, and adopted, in 2007, a White Paper on Sport which provides lengthy explanations on the societal virtues of sports.¹³² More recent European initiatives, and in particular in the Commission's Communication of 23 December 2012 entitled *Towards a Global European Framework for Online Gambling Services* and the Declaration of Nicosia of 20 September 2012 on the fight against the manipulation of sports competitions confirm a serious awareness on the part of the European Union of the plague of corruption in sports.

Through the means of other types of competence, the European Union's institutions can also deal with sports activities. Thus, on the basis of its jurisdiction in criminal matters allowing it to establish minimal rules in relation to the definition of some offences and criminal sanctions, the European Commission has recently requested a study on the criminal legislation of Member States for the apprehension of acts of manipulation of sports competitions.¹³³ However, because of the economic nature of sports activities, European institutions – first among which the Court of Justice of the European Union (CJEU) and the European Commission – were involved with this issue. Therefore, the European Union's institutions can play a role in this sector through their competence in the field of competition and economic freedoms.

B. Sports as an Economic Activity

After the Court of Justice decided, in its 1974 foundational Walrave Koch decision¹³⁴ that the practice of sports should be subjected to community legal rules when it constitutes an economic activity in the sense of the treaty, many cases concerning sports were filed before it. In addition, many grievances concerning the practice of sports organisations were filed with the European Commission.

It seems obvious that the professional sports sector is included in the scope of application of European rules guaranteeing economic freedom and free competition.

¹³¹ Declaration concerning the uniqueness of sport and its social functions in Europe, which should be taken into consideration when implementing the common policy.

¹³² COM(2007) 391 final, 11 July 2007.

¹³³ The report was rendered in March 2012: KEA, Match-fixing in sport. A mapping of criminal law provisions in EU 27.

¹³⁴ ECJ 12 December 1974, Case C-36/74.

On the one hand, professional athletes should be considered as workers¹³⁵ or as service providers (the professional sports service can be assimilated to a salaried performance of work or a remunerated service) and, on the other hand, sports clubs should be considered as “businesses” within the meaning of the *Höfner* decision according to which a business is “any body or organisation which carries on an economic activity, irrespective of its legal nature.”

However, the Court of Luxemburg considered, in its *Deliège* decision of April 11 2000, that “the mere fact that a sports association or federation unilaterally classifies its members as amateur athletes does not in itself mean that those members do not engage in economic activities” within the meaning of the treaty¹³⁶, even in cases where these sports participate in a sporting event, which as a sporting spectacle, constitutes an economic activity.¹³⁷

Furthermore, the Court of Justice very clearly specified that the rules of European Economic law “do not only apply to the action of public authorities but extend likewise to rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services.” This includes sports rules developed by national or international sports organisations, whether public or private.¹³⁸

On the basis of this extremely large apprehension of activities and of the rules proper to the sports movement, rules developed by a national or international sports federation aiming at regulating the progress of a sports competition or aiming at limiting an athlete’s freedom of action, even when they have the goal of achieving interests *a priori* purely linked to sports, can be governed by restrictions linked to the rules of the common market or competition rules.

In order to correctly understand the way in which European economic law deals with sports activities and can potentially interfere with rules established by sports organisations with the aim of regulating sports competitions, a distinction will be made between on the one hand, the implications of the rules of the common interior market, and on the other hand, competition law rules. Afterwards, the issue of whether and how these European economic rules can interfere with sports rules in the area of combating the manipulation of sports competition will be presented.

¹³⁵ In order to determine whether an athlete is an employee of a sports club, it is not necessary that the club be constituted as a corporation; the only element required being the existence of a work relationship or the intent to establish such a relationship. ECJ, 15 December 1995, Case C-415/93, *Bosman*, pt. 74. *Rec.*, p. 5040.

¹³⁶ Joined cases C-51/96 and C-191/97, pt. 46.

¹³⁷ ECJ, 11 April 2000, joined cases 51/56 and 191/97, *Christelle Delière v. Ligue Francophone de Judo et Disciplines Associées ASBL and others*, *Rec.* p. 2595.

¹³⁸ B.N.O. Walrave and Koch v. *Association Union Cycliste Internationale e.a.*, *op. cit.*, pt. 17 and pt. 19. To explain this expansion of the scope of application of the rules of the treaty (in this case, the prohibition of discrimination), the Court added that “the abolition as between member states of obstacles to freedom of movement for persons and to freedom to provide services, which are fundamental objectives of the Community contained in Article 3 (c) of the Treaty, would be compromised if the abolition of barriers of national origin could be neutralized by obstacles resulting from the exercise of their legal autonomy by associations or organisations which do not come under public law.” (pt. 18).

§ 2. The subjection of Sports Activities to the Economic Freedoms of the European Internal Market

The European economic freedoms of athletes that can collide with sporting rules aimed at regulating the functioning of sports competitions or the activity of athletes, are on the one hand the free movement of workers guaranteed by articles 45 *et seq.* TFEU (formerly articles 39 *et seq.* TEC) and on the other hand the freedom to provide services guaranteed by articles 56 *et seq.* TFEU.¹³⁹

Concerning the freedom of movement of workers, article 45 TFEU provides that:

- “1. Freedom of movement for workers shall be secured within the Union.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
 - a) To accept offers of employment actually made;
 - b) To move freely within the territory of Member States for this purpose;
 - c) To stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - d) To remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission?
4. The provisions of this Article shall not apply to employment in the public service.”

Concerning the freedom to provide services, article 56 TFEU provides that:

“Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union.”

In connection with these two main economic freedoms of sport, the CJEU has had the opportunity to lay down fundamental principles in terms of the application of interior market rules to sports activities.

¹³⁹ Formerly articles 49 *et seq.* TEC.

The *Walrave and Koch* decision of 12 December 1974 constitutes the first real intervention of the European Union in the field of sports. In this case, the International Cycling Union's (ICU) rules imposing the obligation that a national team's trainer must be of the same nationality as the riders were at issue. This rule was contested by Dutch trainers, on the basis of the non-discrimination rule applying to the provision of work and services. The Court of Justice laid down the fundamental principle according to which "the practice of sport is subject to Community law only so far as it constitutes an economic activity within the meaning of article 2 of the Treaty",¹⁴⁰ which implies that the rules regulating sport, including rules developed by entities other than public authorities, can be subject to control by European disciplines. But it also laid out the exception according to which a rule applying to a situation "concerning sports exclusively" should be considered as "not related to economic activity" and therefore, should be excluded from the scope of application of the provisions of the Treaty relative to economic freedoms.¹⁴¹ In the case before the Court, the European judges decided that the composition of sports teams, in particular as national teams, was only concerned with sports, and did not affect economic activity, and thus, did not fall within the scope of application of the Treaty.

This first decision allowed for a "sporting exception", according to which some rules of sports organisations are not governed by Community law.¹⁴² This "sporting exception", was to be interpreted strictly as concerning rules having as an exclusive object the regulation of the functioning of sports competitions in the interest of these sports competitions.

The *Dona* decision of 14 July 1976 confirms this since the Court of Justice decided, in this case, that the rule of the Italian Football Federation which required that only players affiliated to this federation could take part in matches as professional or semi-professional players – this rule limited *de facto* the possibility to participate to Italian players – was contrary to the Treaty. The Court of Justice explained however, that such selection criteria were acceptable if they excluded foreign players for non-economic reasons and which presented only a sporting interest (as is the case, for example, of the determination of the composition of national teams).¹⁴³

The potential uses of this sporting exception were halted by the *Bosman* decision of 15 December 1995. This decision led to the trivialisation of sports activities in their relationship with European economic law. At issue were, on the one hand, the FIFA rule according to which every transfer of a football player to a new team is subject to the consent of his current club and in exchange for the payment, by the acquiring club, of a transfer, training or promotion compensation, and on the other hand, the FIFA rule limiting the number of professional players possessing the nationality of other Member States allowed to take part in national competitions.

¹⁴⁰ Pt. 4.

¹⁴¹ Pt. 8.

¹⁴² F. LATTY, "L'arrêt, le Livre blanc et le Traité. La *lex sportiva* dans l'ordre juridique communautaire. Développements récents", *Rev. du Marché commun de l'Union européenne*, 2008, p. 44.

¹⁴³ ECJ, 14 July 1976, case C-13-56 Gaetano Donà v. Mario Mantero, reference for a preliminary ruling: *Giudice conciliatore di Rovigo* – Italy, *Rec.* p. 01333.

The Court considered that the rule relating to transfer conditions was within the scope of application of the provisions of the Treaty relating to the Treaty provisions on the free movement of workers.¹⁴⁴ On this point, the Court held that the difficulty of differentiating between the economic aspects and the purely sporting aspects of an activity could not warrant the exclusion of that activity from the Treaty's scope of application.¹⁴⁵ The Court also considered that the rule of transfer was contrary to article 48 of the TEC, insofar as the requirement to pay transfer fees when recruiting a player from another club after the expiration date of his contract had an impact on the possibility for players to find employment. Several justifications were brought forward to warrant such a restriction but they were all put aside by the European judge. The same goes for the maintenance of a financial and sporting balance between clubs and the support for identifying and training young talent. The Court of Justice recognised the legitimacy¹⁴⁶ of these objectives but decided that the measure under discussion was neither adequate¹⁴⁷ – because of the uncertainty weighing on the sporting future of young players, which makes the amounts of transfer payments random – nor necessary¹⁴⁸ – because of the existence of less restrictive alternative measures. Using a similar reasoning, the Court of Justice considered that the nationality rule also constituted an unjustified barrier to the free movement of workers, since the restrictions linked to nationality applied indiscriminately to all competitions, and not to specific competitions where the nationality of the players could be a criterion of identification for competing teams.¹⁴⁹

This decision was criticised by many commentators who considered that this decision led to a real “commodification” of European football, and more generally, European sport.¹⁵⁰ For the purposes of this report, it should be noted that this decision largely limited the autonomy of the rules of organisation of sports competitions and the rules concerning the functioning of sports organisations. It should also be noted that in its assessment of the sporting measures concerned against the provisions of the Treaty, the Court of Justice used a narrow proportionality test, leaving very little leeway to the authorities enacting these rules. Although not interfering with sporting affairs, the European judge effectively limited the autonomy of the sporting movement, in this way.

¹⁴⁴ Pt. 87.

¹⁴⁵ Pt. 76.

¹⁴⁶ Pt. 106.

¹⁴⁷ Pt. 109.

¹⁴⁸ Pt. 110.

¹⁴⁹ Pt. 128.

¹⁵⁰ See for example, the French Senate's information report, “Plus vite, plus haut, plus fort ? L'Union européenne et le sport professionnel”, European Affairs Commission, n° 379, 2013, pp. 30-31.

§ 3. The Subjection of Sports Activities to European Competition Law

The decisions taken by sports organisations, which can be considered as businesses, can also be controlled by European rules on competition, in particular articles 101 and 102 of the TFEU.¹⁵¹ In other words, it cannot be excluded that some sporting rules can be considered as anti-competitive practices.

The European Commission was the first to be confronted with the issue of the possible interaction between a rule enacted by a sports organisation and European law competition rules. In the ENIC v. UEFA decision, the contested measure was the UEFA rule prohibiting the multiple ownership of sports clubs taking part in the same competition. This was obviously not a “purely sporting” rule, since one can immediately guess the economic implications that the CAS was also confronted with.¹⁵² But this is clearly a rule aimed at protecting the integrity of sports competitions and avoiding conflicts of interest that can occur when several clubs, controlled by the same person, take part in the same competition. The London ENIC corporation considered that this rule violated articles 81 and 82 TEC by limiting the possibilities of investing in football clubs.

However, the European Commission considered that although the rule prohibiting the multiple ownership of football clubs fell under the scope of rules on restrictive arrangements of article 81,¹⁵³ it did not violate these rules. Before coming to this conclusion, the Commission examined the object and effects of the contested measure. Concerning its object, the European Commission found that the regulation did not have the goal of disrupting the market, but was only aimed at ensuring the sound progress of competitions.¹⁵⁴ This objective, however legitimate it may be, could not, on its own, preclude the application of article 81. It then studied the effect of the rule by stating that “*the question to answer ... is whether the consequential effects of the rule are inherent in the pursuit of the very existence of credible pan European football competitions.*”¹⁵⁵ In addition, the European Commission concluded that this measure was necessary and proportionate:

“Without the UEFA rule, the proper functioning of the market where the clubs develop their economic activities would be under threat, since the public's perception that the underlying sporting competition is fair and honest is an essential precondition to keep its interest and marketability. If UEFA competitions were not credible and consumers did not have the perception that the games played represent honest sporting competition between the participants, the competitions would be devalued with the inevitable consequence over time of lower consumer confidence, interest and marketability. Without a solid sporting foundation, clubs would be less capable of extracting value from ancillary activities and investment in clubs would lose value”¹⁵⁶.

¹⁵¹ Formerly Articles 81 and 82 of the TEC, relating to restrictive arrangements and abuse of dominant position respectively.

¹⁵² See CAS 98/200 *AEK Athens and SK Slavia Prague v. Union of European Football Associations* (UEFA), award from 20 August 1999.

¹⁵³ Pt. 26.

¹⁵⁴ Pt. 28.

¹⁵⁵ Pt. 32.

¹⁵⁶ European Commission, Decision to dismiss a complaint, June 2002, case COMP/37.806, *ENIC v. UEFA*.

Three important lessons can be drawn from this decision:

1. A sports organisation's decisions, regardless of whether they are qualified as "purely sporting" rules, can fall within the scope of application of rules of the Treaty relating to free competition.

2. A sporting rule, aimed at ensuring the integrity of sports competitions, can be found to have, from a European Union law point of view, a legitimate purpose, regardless of its harmful effects on competition.

3. An evaluation of the necessity and proportionality of such a measure should accord a relatively broad margin of appreciation to sports institutions, which are in a good position to evaluate the disciplines regulating sports competitions, and whether they serve the interests of the sporting movement. This is where a certain residual autonomy of the *lex sportiva* can be allowed.

However, these conclusions should not be paid too much heed, because the subsequent decisions of the CJEU took a different position which shows a true activism on the part of European judges to obliterate any idea of sports specificity.

A decision rendered on 18 July 2006, in the *Meca-Medina and Majcen* case¹⁵⁷ further reinforced the trivialisation of sports rules in the framework of the European Union. At issue were the anti-doping rules enacted by the International Swimming Federation (FINA) which were a mere transposition of the rules established by the IOC, and that were, *a priori*, purely destined to organise the sports competition.¹⁵⁸ Two swimmers, whose tests yielded positive results after a doping test, and who were both suspended by the FINA for a four year period appealed this decision before the Court of Arbitration for Sport and lost their appeal.¹⁵⁹ Instead of challenging the validity of the arbitration award before the Swiss Federal Court, which is competent to judge annulment requests for CAS awards, the petitioners lodged a complaint before the European Commission against the IOC, on the basis that some practices concerning doping control were incompatible with competition rules and the freedom to provide services. In essence, the petitioners invoked the fact that the sanctions for the violations established by the tribunal were disproportionate.

According to the petitioners, the tolerance threshold fixed at 2ng/ml constituted a concerted practice between the IOC and 27 certified laboratories. In addition, also according to the petitioners, this threshold was scientifically ill-founded and could lead to the exclusion of innocent or merely negligent athletes.

¹⁵⁷ ECJ, 18 July 2006, case C-519/04 -P, *David Meca-Medina and Igor Majcen*, Rec. I, p. 7006.

¹⁵⁸ In addition to the public health and public policy aspects that can also be involved.

¹⁵⁹ In this case, the disciplinary proceedings followed an atypical course. In a first decision dated 29 February 2000, the CAS confirmed the suspension decisions taken by FINA. In January 2000, scientific experiments showed that the substance for which the swimmers tested positive could be produced endogenously by the human organism when certain foods were ingested. In light of these developments, FINA and the petitioners agreed, by an arbitration convention, to submit the issue to the CAS once again. In an award dated 23 May 2001, the CAS reduced penalty to two years.

In the petitioners' case, the excess to the threshold established by the IOC could have been caused by eating a meal containing un-neutered pork meat. Furthermore, still according to the petitioners, the use by the IOC of an objective liability mechanisms as well as the establishment of authorities charged with the arbitral resolution of sports disputes (the CAS and the International Council of Arbitration for Sports), which are not sufficiently independent from the IOC, reinforced the anti-competitive nature of the threshold.

This case was the first opportunity for the Court of Justice to make a determination on the applicability of competition rules to sports regulations. The Court of First Instance of the European Communities applied the Bosman principles to the present case and found that a sports regulation extraneous to the scope of application of economic freedoms was also extraneous to economic competition relationships, and on this basis, excluded the rule prohibiting doping from the scope of articles 81 and 82 TEC (restrictive practices and abuse of dominant position), and considered it as a purely sporting rule.¹⁶⁰ Refusing to follow the recommendations of the Advocate-General, the Court of Justice did not see things in the same light and determined that:

“even if those rules do not constitute restrictions on freedom of movement because they concern questions of purely sporting interest and, as such, have nothing to do with economic activity (...), that fact means neither that the sporting activity in question necessarily falls outside the scope of Articles 81 EC and 82 EC nor that the rules do not satisfy the specific requirements of those articles.”¹⁶¹

But more importantly, the Court of Justice seemed to set aside any sporting exception leading to the exclusion of sport from the scope of application of competition rules holding that:

“The mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down.”¹⁶²

The Court of Justice also considered that rules concerning the fight against doping should be examined with regard to Articles 81 and 82 of the Treaty and denied the existence of purely sporting rules.

In the end, the Court of Justice considered that the anti-doping rule at issue was proportionate and had a legitimate goal. However, it found that:

“It must be acknowledged that the penal nature of the anti-doping rules at issue and the magnitude of the penalties applicable if they are breached are capable of producing adverse effects on competition because they could, if penalties were ultimately to prove unjustified, result in an athlete's unwarranted exclusion from sporting events, and thus in impairment of the conditions under which the activity at issue is engaged in.

¹⁶⁰ Pt. 42 of the CFI's decision. This position is the one adopted previously by the European Commission. See, the European Commission, Decision of 01/08/2002, SG (2002) D/ 231051.

¹⁶¹ Pt. 31.

¹⁶² Pt. 27.

It follows that, in order not to be covered by the prohibition laid down in Article 81(1) EC, the restrictions thus imposed by those rules must be limited to what is necessary to ensure the proper conduct of competitive sport. ”

Chiefly, the Court of Justice led an extremely rigorous scrutiny of the contested rule by using classical methods of scrutiny applied without reserve to sports regulations. It controlled the IOC’s anti-doping rules according to three well known conditions laid down by European case law in the field of free competition:

1. Do the contested rules pursue a legitimate objective?

In the case before it, the Court of Justice gave a positive response, indicating that anti-doping measures allow sports competitions to be conducted fairly, as well as safeguarding the athletes’ health and the ethical values of sport.¹⁶³

2. Are restrictions to the athletes’ freedom of action that can potentially arise from anti-doping penalties inherent in the anti-doping rule rules?¹⁶⁴

In the facts of this case, the Court concluded that it was so:

“Therefore, even if the anti-doping rules at issue are to be regarded as a decision of an association of undertakings limiting the appellants’ freedom of action, they do not, for all that, necessarily constitute a restriction of competition incompatible with the common market, within the meaning of Article 81 EC, since they are justified by a legitimate objective. Such a limitation is inherent in the organisation and proper conduct of competitive sport and its very purpose is to ensure healthy rivalry between athletes.”¹⁶⁵

3. Are such restrictions proportionate to the objective pursued?¹⁶⁶

In this case, the Court of Justice, with regard to the scientific elements in its possession, declined to make the determination that the urine threshold, beyond which the presence of nandrolone in the athlete’s body, constitutes doping.

This test used by the Court shows that the European judges did not refrain from making a determination of the validity of the rating scale of sports penalties with respect to the economic consequences for the athlete concerned.

Thus, the Meca-Medina decision seriously limited the possibility to find a “sporting exception” in connection to rules adopted by sports organisations to organise the functioning of sports competitions. In other words, the Court applies to sporting issues, principles that are not proper to sports activities. This may seem surprising, since European judges can sometimes show lenience when applying measures that could lead to the violation of economic liberties for some economic activity sectors. This is the case, for example, in the field of regulating bets.¹⁶⁷

¹⁶³ Pt 43.

¹⁶⁴ Pt 44.

¹⁶⁵ Pt 45.

¹⁶⁶ Pt 49.

¹⁶⁷ See *infra*.

After showing some meekness with regard to sporting rules, the European Commission finally followed the direction taken by the CJEU. In its 2007 White Paper on Sport, it states that “In line with established case law, the specificity of sport will continue to be recognised, but it cannot be construed so as to justify a general exemption from the application of EU law.”¹⁶⁸ This means that even rules of a purely sporting nature are snatched by the principles of free movement and free competition and can only give rise to “limited and proportionate” restrictions.¹⁶⁹

Concerning free movement, the European Commission explains this in Annex II of the White Paper:

“Without prejudice to the above, the Court has recognised certain specificities in the area of sport. The Court has also acknowledged the societal importance of sporting activities.

In general, the Court has held that sporting rules would not have to be subject to Community law only when they concerned issues of purely sporting interest. Such would be the case, for example, of nationality-based criteria for the composition of national teams. More specifically, the Treaty’s provisions concerning freedom of movement of persons do not prevent the adoption of rules or practices excluding foreign players from certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only, such as, for example, matches between national teams from different countries. However, such restrictions must remain limited to that particular objective and cannot be relied upon to exclude the whole of a sporting activity.

The same applies to restrictions on competitions resulting from anti-doping rules adopted by sporting organisations. As confirmed in the Meca-Medina case, the sporting character of a rule does not remove from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down. This important assertion confirmed that the Court will not apply blanket exemptions to sport-related activities when reviewing their relation to Community law.

The Court has also made it clear that each time when the sporting character of regulations is invoked, careful and strict analysis of the grounds for excluding a specific rule from the application of the Treaty must be undertaken. In the Bosman ruling, for instance, the Court declared that Article 39 (formerly 48) EC precludes imposing restrictions on the number of players of other nationalities taking part in football matches. Such restrictions would clearly restrict the possibility of players to participate in matches, and this would also be considered as a restriction of the players’ freedom of employment. The Court disagreed that such restrictions could be justified on non-economic grounds, such as the link between sporting clubs and their country, the need to train a sufficient number of players of a given nationality, or to help maintain competition between clubs.”¹⁷⁰

¹⁶⁸ Pt. 13, § 4.1.

¹⁶⁹ Pt. 14, § 4.2.

¹⁷⁰ Pt. 106.

Concerning the principle of free competition, the European Commission lays out, in Annex I of the White Paper, the methodological approach chosen to determine whether a rule enacted by a sports organisation violates articles 101 and 102 TFEU.

The first step is to determine whether the sports association that adopted the rule is to be considered as an undertaking or an association of undertakings.

An association is considered as an undertaking to the extent it carries out an economic activity, such as the selling of broadcasting rights. The sports association is an association of undertakings if its members carry out an economic activity. The European Commission is tasked with determining to what extent sports can be considered as an economic activity. The status of amateur does not affect this determination in any way. In the absence of an economic activity, competition rules do not apply. Otherwise, the review of the measure continues in a second step.

In a second step, if the European Commission finds that it is in the presence of an economic activity, it establishes whether the rules in question restrict competition, and whether the restrictions caused by the rule are inherent to the pursuit of the objectives.

If both questions are answered in the affirmative, the Commission establishes, in a third step, whether the rule is proportionate in light of the objective pursued.

§ 4. The Requirement of Compliance of Sports Rules Combating the Manipulation of Sports Competitions with European Union Law

Sports activities, inasmuch as they can be qualified as sports activities, and sporting regulations, to the extent they can affect economic freedoms, are entirely trivialised in the framework of the Treaty rules. Indeed, the CJEU and the European Commission do not hesitate to recognise the legitimate character of the objectives of protecting the integrity of sports competitions and cleaning up sports practices. However, they also do not hesitate to use a classical proportionality test that is sometimes very intrusive. This proportionality test is, in the CJEU case law, made up of three cumulative steps:

1. The measure should be appropriate to the objective being pursued (suitability test);
2. The measure must be necessary, meaning that it must be the least restrictive among the other available measures (necessity test);

3. Lastly, it should be proportionate *stricto sensu*, meaning that after a balancing of the objectives pursued and the gravity of the established violations of freedoms, it should not be disproportionate (*stricto sensu* proportionality test).¹⁷¹

The rules adopted by sports organisations to combat violations of sports ethics can be subjected to the same test.

For example, the complaint recently lodged by the agent of a Belgian player before the European commission against the financial fair-play rule adopted by UEFA can be mentioned.¹⁷² This rule requires football clubs to meet a financial balance: these clubs cannot spend amounts exceeding their revenues.

UEFA put in place, in 2012, the UEFA Club Financial Control Body (CFCB), which has the power to evaluate the financial performance of clubs. The CFCB rendered a first decision in December 2012, in which it sanctioned eight clubs for late payments. The Spanish club Malaga was, for instance banned from all European competitions for one year because of late payments established on 30 June 2012. This suspension was accompanied by a threat of suspension in the European cup for an additional season as well as a 300,000 Euro fine if the club did not pay its arrears in 2013. The Spanish club reacted by referring to the Court of Arbitration for Sport, which, in a decision dated 11 June 2013, rejected the club's appeal.¹⁷³

The Premier League adopted, on 8 February 2013, the new financial regulation of UEFA clubs imposing on clubs the obligation to limit their losses under penalty of losing points in the championship, and the accumulated deficit in three years (2013 to 2016) should not exceed 123 million Euros. However, this rule seems to be of limited scope since only three clubs, Chelsea, Liverpool and Manchester City exceeded this limit during the past three years.

The financial fair play rule clearly limits the leeway of sports clubs. Before the European Commission, the complainants consider that this rule involves restrictions to competition that are incompatible with the Treaty, insofar as, among other effects, it limits investments, and involves a reduction of the number of transfers, their value and the number of players under contract per club, and in effect decreases the revenues of players' agents.

¹⁷¹ See in particular, ECJ 5 May 1998, Case C-180/96, *United Kingdom v. Commission* ("mad cow" case), Rec. p. I-02265, pt. 96.

¹⁷² These proceedings were introduced by the same lawyer who defended Jean-Marc BOSMAN, who was implicated in the famous case previously mentioned. Jean-Louis DUPONT had already lodged a complaint with the European Commission against the financial fair play rules on behalf of the players' agent Daniel STRANI, but it was rejected, partly because he could not justify a personal interest to bring an action. Meanwhile, proceedings were initiated before the court of first instance in Brussels, with the hope that the matter be referred to the CJEU. Belgian lawyers Jean-Louis DUPONT and Martin HISSEL announced on Wednesday 24 September 2014, that the association of all official fan clubs of Manchester City (MCFC) joined the proceedings against UEFA's rules on financial fair play.

¹⁷³ For UEFA's reaction, see [<http://fr.uefa.org/disciplinary/news/newsid=1962530.html>].

The result of this complaint is uncertain. The European Commission officially announced its support for the financial fair play rule. In fact, on 21 March 2012, the President of the Commission and the President of UEFA signed a common declaration which asserts that:

“The financial equilibrium rule reflects a sound economic principle that will encourage more rationality and discipline in club finances, and contribute to the preservation of the general interests of football.”

However, until then, the compatibility of the rule with article 101 and 102 of the TFEU was never tested. It would be interesting to see the analysis of the European Commission under this angle.

Regarding measures to combat the manipulation of sports competitions, one should consider the possibility that they could constitute the basis of complaints concerning their possible inconsistencies with European Union law, in particular when they are linked to online betting activities. European institutions have shown an inclination in favour of the promotion of rules aiming to guarantee the integrity of sport. The objective pursued should therefore, without difficulty, allow restrictions to economic freedoms and competition law. However, this will be granted under the condition that these rules adapt to the free market constraints and not be more restrictive than is necessary.

Some rules of prevention, such as the prohibition for athletes to bet on their sport or competition (this prohibition is currently transposed into some national legislations¹⁷⁴), can be incompatible with the freedom to engage in a chosen economic activity (this implicates, in the chosen example, the freedom to provide services as well as the freedom to consume services¹⁷⁵). This does not necessarily involve an inconsistency between the two rules which would lead to the invalidation of the prohibition. But it is only after an *in concreto* examination of the objective of the rule and its effects, in the scope of application of the European Treaty, that its consistency with it can be confirmed.

Similar difficulties could also occur concerning repressive rules, and in particular disciplinary sanctions to which athletes who take part in the manipulation of a match they are participating in are exposed. At least two elements warrant a strong vigilance to the CJEU case law on sports rules:

- On the one hand, it is established that the standards of proof applied by disciplinary bodies of sports federations and the CAS may be different from those used by State courts, especially in criminal proceedings, in which the "beyond any reasonable doubt" standard usually applies. This is less true in civil proceedings in which the standard of "preponderance of evidence"

¹⁷⁴ This prohibition is provided for, in French law, by the Law of 12 May 2010.

¹⁷⁵ See *infra* Part 1, Title 1, Chapter 2, Section 2, § 1.

(equivalent to the standard of "balance of probability"¹⁷⁶) is applied commonly, a standard also applied by the CAS.¹⁷⁷ Still, the standard is, in most cases, the "comfortable satisfaction" of the disciplinary body or the arbitral body that the athlete can be found to have taken part in match-fixing operation. In other words, it is on the basis on strong suspicions – but not beyond a reasonable doubt – that an athlete can be found to be in violation. This standard is perfectly explained, in the sporting community, by the fact that competitions should not only be loyal, but have the appearance of being so. Therefore, in cases of serious doubts, a sanction can be imposed.¹⁷⁸ But in these conditions, if a doubt remains, some sanctions can be considered to be disproportionate,¹⁷⁹ for example having regard to the violation of the freedom to work in sports, if the sanction is a suspension or a ban. It would be appropriate, therefore, to consider the consequences of the application of a CAS award that can lead to the birth of a dispute over which the CJEU has jurisdiction, for example, when an athlete plans to challenge a sports disciplinary decision that was confirmed by the CAS. This risk is not purely hypothetical¹⁸⁰ with regard to the CJEU's assertion in the Meca-Medina decision, according to whom:

"It must be acknowledged that the penal nature of the anti-doping rules at issue and the magnitude of the penalties applicable if they are breached are capable of producing adverse effects on competition because they could, if penalties were ultimately to prove unjustified, result in an athlete's unwarranted exclusion from sporting events, and thus in impairment of the conditions under which the activity at issue is engaged in"

- On the other hand, similarly, it is known that sports federations sometimes impose very heavy sanctions including life bans from the sporting movement. Again, the severity of the sanction can be understood in a purely sporting context; but since it can collide with the freedom to engage in an occupation guaranteed by European Union law, the proportionality test to which the sanction can be subjected would be less welcoming of sports specificities.¹⁸¹ This would lead one to think that the rationality of sanctions can, in certain cases of extreme doubt, be criticised in relation to European Union law, particularly since European institutions seem reluctant to open an

¹⁷⁶ "An allegation is true by a "balance of probability" i.e. that the occurrence of the circumstances on which it relies is more probable than their non-occurrence," CAS 2010/A/2266 Mészáros & Poleksic v. UEFA.

¹⁷⁷ See E. BARAK, D. KOOLAARD, "Match-fixing: the aftermath of Pobeda – what have the past four years brought us?", in: *CAS Bulletin*, 2014, Fall 1, pp. 5-24.

¹⁷⁸ For more on the standard of proof used in the area of sports, see *infra* Part 3, Title 2, Chapter 1, Section 2, § 3, "The Disciplinary Procedure".

¹⁷⁹ It has been suggested that, like the flexible standard of proof introduced by Article 3.1 of the Anti-Corruption Code of the International Cricket Council, the level of the standard of proof be adapted to the seriousness of the disciplinary action. See S. ZAKSAITE, "Match-fixing: the shifting interplay between tactics, disciplinary offence and crime", *International Sport Law Journal*, 2013, vol. 13, pp. 291-292, cité par E. BARAK, D. KOOLAARD, *op. cit.*

¹⁸⁰ However, it should be noted that, in most cases, there is no recourse against CAS awards, since the conditions for such recourse are strictly limited.

¹⁸¹ Regarding the nature of the proportionality test conducted by sports organisations and by the Court of Arbitration for Sport when verifying the validity of disciplinary sanctions, see *infra* Part 3, Title 3, Chapter 1, "The Primary Function of the Sporting Movement: Preserving Sport Integrity".

exception system for rules stemming from sports organisations, even when their primary aim is non-economic. It should be noted, however, that in the system of “comfortable satisfaction”, the harsher the measure considered, the higher the requirement of guilt probability must be in order for the satisfaction to be “comfortable”.¹⁸²

Conclusion of Section 2

Even if, for some time, the hypothesis of a *sporting exception* was considered in the case law of the CJEU, it is obvious today that all the rules emanating from sports organisations can be subjected to a verification of compliance with European rules relating to freedom of movement – and most often to the freedom to provide services – and to the rules regarding free competition. This does not mean, however, that a sporting rule that constitutes an obstacle to competition (as framed by European Union law) should systematically be considered as contrary to European Union law. Restrictions can be accepted as long as they are warranted by imperious reasons and as long as they are proportionate to the objective pursued. There is no doubt that the fight to preserve integrity in sports constitutes a legitimate objective in the eyes of the European Commission as well as the CJEU. The main boundary that is imposed on sports organisation is thus the requirement of proportionality.

From this requirement that sporting rules comply with European Union law, it should be kept in mind that sports organisations should take into consideration community constraints when they consider adopting new rules that may cause economic or patrimonial consequences to the recipients of these rules, when at the same time, Community institutions can also take into consideration the specificity of sport when considering the proportionality of market impediments.

Chapter 2. Sport: the Basis for Bets Transcending National Borders

The factors of development of a transnational market of sporting bets did not only produce positive consequences (**section 1**), making it necessary to regulate sporting bets (**section 2**).

Section 1. Factors of Development of a Transnational Market of Sports Bets

The factors of development of a transnational market of sporting bets are numerous. However, the predominant factors carry certain risks (§ 1 to § 6).

¹⁸² See *infra* Part 3, Title 2, Chapter 3, Section 2, “The Common Principles Applicable to all Stakeholders”.

§ 1. The Development of the Sports Betting Market, in Particular Online Bets

The advent of a sports betting market is linked to very precise factors (A). Quantitative data on the sports betting market (B), understanding the economic models of betting operators (C) as well as the observation of the drop in the cases of sporting bets (D) allow one to understand why this market is permanently established in the economic landscape and take stock of the stakes linked to the manipulation of sports competitions.

A. The Advent of a Globalised Market

Although no historian seems to be able to state where and when the first bet was really placed, sporting bets are undoubtedly a very ancient phenomenon.¹⁸³ Several historians underscore that, in ancient times, while the strongest fought to take power within the group, the others bet on the outcome of the fight hoping to obtain food.¹⁸⁴ In the eighth century B.C., the first ancient Olympics were probably the first major sporting event to generate bets.¹⁸⁵ Recently, a little more is known about the first fixed match. The analysis of an ancient papyrus indeed reveals the most ancient written trace referencing a fixed match: it was held in the year 267 A.D., on the borders of the Nile, in the city of Antinopolis between two wrestlers.¹⁸⁶

The first “organised” sports bets probably existed in Greek Antiquity.¹⁸⁷ Modern bets made their appearance in the 18th century, when Briton Harry Ogden became the first bookmaker known to offer odds betting on horse races. In any case, until 1995, sporting bets, and gambling more generally were managed locally, within a country or jurisdiction (State in the United States, *Land* in Germany).

¹⁸³ Paragraph written in partnership with IRIS. See C. KALB, P. VERSCHUUREN, *Money Laundering: The Latest Threat to Sports Betting*, IRIS, 2013.

¹⁸⁴ [<http://www.paris-sportif-en-ligne.org/histoiredesparissportifs.html>].

¹⁸⁵ [<http://www.kelbet.com/histoire-du-pari-sportif/>].

¹⁸⁶ See “Le premier match truqué de l’histoire”, *Courrier International*, 30 June 2014.

¹⁸⁷ The earliest examples date back to the dawn of literature: HOMER gives the example of a bet on a horse race in Book 23, line 482 of *The Iliad*: “The leader of the Cretans was angry, and answered, ‘Ajax, you are an excellent railer, but you have no judgment [noos], and are wanting in much else as well, for you have a vile temper. I will wager you a tripod or cauldron, and Agamemnon son of Atreus shall decide whose horses are first. You will then know to your cost.’” (HOMER. *The Iliad of Homer. Rendered into English prose for the use of those who cannot read the original*. Samuel Butler. Longmans, Green and Co. 39 Paternoster Row, London. New York and Bombay, 1898). Later, in Rome, Tertullian wrote in § xvi: 1 of his book *De spectaculis*: “Look at the populace coming to the show mad already! Disorderly, blind, excited already about its bets!”. The interest of the Romans for sports bets is known negatively: while the prohibition of gambling was constantly renewed (for religious reasons rather than economic), sports competitions were excluded from this prohibition. See, for example, J. CARCOPINO, *The People and The City at the Height of the Empire*, London, Routledge, 1943, p. 251: “games of chance were forbidden under penalty of a fine fixed at four times the value of the stakes; and a senatus consultant, of uncertain date confirming the Lex Titia, the Lex Publicia, and the Lex Cornelia renewed the prohibition of betting (sponsiones), except in the case of wagers laid on physical exercises”. For a more recent example, see S.B. FARIS (2012), “Changing Public Policy and the Evolution of Roman Civil Law on Gambling”, *University of Nevada Las Vegas Gaming Law Journal*, 3, pp. 199-219.

Each State or local jurisdiction had established a system that was determined as being the most adapted to its objectives and characteristics: prohibition, exclusive right system (monopoly) or licence system. In addition, it should be noted that it was frequent practices for States to alternate periods of prohibition and of legalisation of sporting bets, according to budget considerations (filling State coffers) and public risks (often as reactions to scandals). In the United Kingdom, considered today as one of the leading countries in terms of sporting bets consumption, these practices were prohibited (only horse racing bets were authorised in racetracks) until being “legalised” in 1960 (Betting and Gaming Act, 1960). At the same time, the United States decided to completely prohibit telephone sporting bets on the national level (Federal Wire Act). When strong priority was given to the fight against organised crime and corruption, money laundering, *etc.*, States generally implemented a certain number of restrictions. In the mid-1990s, the universe of sports bets was transformed by the appearance of the Internet. Carried by the opportunities offered by this new distribution channel, sports bets are going through an unprecedented expansion wave, thanks to, in particular, the factors described below:

The proliferation, between 1995 and 2002, of new online sports betting operators. More than 8,000 operators offer sports bets in the world according to the Cert-Lexsi research centre.¹⁸⁸ These thousands of operators were established in countries that realised that regulating online games from their territory could provide an economic bonanza (Alderney, Gibraltar, Isle of Man, Malta, the Cagayan province in the Philippines, the Kahnawake territories in Quebec, Antigua and Barbuda, Costa Rica, *etc.*). Most of these operators offer their bets everywhere in the world, often without the national authorisations required. When they offer their products in the countries of their clients without authorisation to do so, they are considered as illegal operators in these countries. Today, 80% of bets on the global sports betting market are illegal. (see *infra*).

The emergence of private shareholders. It is difficult, given the lack of transparency of the structures and the establishment of these corporations in countries where surveillance is lax or absent, to possess knowledge of antecedents and their possible links to illegal activities or criminal groups. In many cases, there is no way to determine the real owners of corporations established in “gambling havens” such as the Cagayan province in the Philippines, Costa Rica, or the Isle of Man.

The establishment of most of these new operators in countries considered as tax havens or applying a low level of taxes and regulation on sporting bets. More than 80% of sports betting operators are established in such countries.

¹⁸⁸ Cybercrime in online gambling (CERT-LEXSI White Paper, July 2006).

The creation of national regulating authorities for bets whose resources are sometimes insufficient to deal with manipulated competitions and money laundering. For some years now, a wave of national legislative reforms is attempting to better combat illegal bets, primarily online bets, while offering willing operators the possibility to become “responsible”. These authorities gradually appeared in Italy, France, Denmark, Spain, *etc.*: *Agencia delle dogane e dei monopoli* (ex AAMS) in Italy, the *Autorité de régulation des jeux en ligne* (ARJEL) in France, *Spillemyndigheden* (*Danish Gambling Authority*) in Denmark, *Dirección General de Tributos y Ordenación y Gestión del Juego* in Spain, *etc.* In the context of a grave economic crisis, these countries are hoping to benefit from taxes levied on betting operators. However, most of the time, the changes in the world of sporting bets seem to be taking place in the absence of the realisation by States of the potential positive effects (consumer security, decrease of illegal gambling, increase of public revenue) and risks for civil society. In fact, these entities had very little time to accomplish an impressive number of tasks: backing and implementing a new legislation, including the granting of agreements or licences to operators, *etc.* They also had to learn and understand a very specific, complex and constantly changing market. An analysis of the risks linked to fixed matches and money laundering as well as the actions to combat them are thus currently put on the backburner.

The unprecedented change in the offer of sporting bets. In the past, sports bets only existed in the pari-mutuel form (except in the United Kingdom, Ireland, Nevada, and some other countries such as South Africa and Sweden). In a 15-year period, this market was transformed into a quasi-monopoly of odds betting, making up close to 90% of the market. Subsequently, the market witnessed the progressive emergence of betting exchanges¹⁸⁹, the live betting revolution,¹⁹⁰ the possibility of betting on less publicised events (such as table tennis or badminton) as well as derivative betting formulas (offering the possibility to bet on match facts and not on the result or score of the game), *etc.*

¹⁸⁹ Over the counter system. “Here, the sports betting website is only used as an interface to connect bettors. Created in 2000 by Flutter.com, it is currently used by the Betfair website. The website does not offer predetermined odds: the odds are the result of the meeting of the offer and the demand: the website is not exposed to risks since it does not pool the money of punters; however, it cannot take a direct margin on bets since they escape its control; the website earns its income by taking a margin when bettors decide to transfer the the money to their bank account or on each transaction made between punters (5% margin)”, Quentin TOULEMONDE, *Online Sporting Bets*, @mphora Publishers, Paris, 2011, p. 64.

¹⁹⁰ “Live bet during a sporting event. As opposed to bets before a game, for which bookmakers close their counters minutes prior to the beginning of the match (typically 15 to 90 minutes)”, Quentin TOULEMONDE, *op. cit.*, p. 185.

The considerable increase of return rates for bettors.¹⁹¹ Whereas twenty years ago, the Italian *Totocalcio*, world leader of sporting bets during the 1980s, offered odds limited to 50%, Betfair (the absolute leader of betting exchanges) often offers return rates above 99% and more than 100 different bets on large football matches. All the main online betting operators, in fierce competition, offer return rates above 90%:

Operator	William Hill	Ladbrokes	Unibet	Bwin	Sportingbet	Bet365
Odds 2012	92.1 %	93 %	93 %	93.1 %	93.8 %	95.6 %

Sources: annual reports, except for Bet365 (press release).

New types of bettorsbettors. A new category of the population started using modern bets, attracted by *arbitrage* opportunities (and sometimes “sure bets”) and high rates of return. Some people apply financial techniques to sports bets, in order to make gains: they rely on the lack of maturity linked to the youth in a sector that is still weakly regulated on an international level. “Traders”, but also criminals are now part of the picture. They open more accounts and use “runners”¹⁹² who place bets in their place and sometimes disguise their identities to stay under the radar of betting operators and authorities. In the United Kingdom, the task is a particularly easy one.¹⁹³ it is sufficient to open ten accounts with the operators offering the highest odds, based in gambling havens, while being assured that their identity, age or bank account are seldom checked. The famous expression “Know Your Customer”¹⁹⁴ displayed as an absolute guarantee by all betting operators, is not imposed in the sports betting sector with the same rigour as in the financial sector.

¹⁹¹ “The possible winnings paid out by a bookmaker to bettors. For example, “Unibet offers a 95% payback” means that possibly, when a client invests 100 euros on Unibet offers, he can win 95.” Quentin TOULEMONDE, *op. cit.*, p. 36. The mathematical expectation corresponds to the numeric value allowing the evaluation of the result through a random expectation. It allows, for example, to measure the degree of fairness of q game: it is equal to the sum of gains (and losses) weighed by the probability of winning (or losing).

¹⁹² Who take illegal physical bets (phone or face-to-face) and then transfer them to illegal betting operators.

¹⁹³ Due to the British rules allowing betting operators established in the European Economic Area or who are on the Whitelist to offer their services to bettors-consumers from the United Kingdom.

¹⁹⁴ Term borrowed from the banking sector (and more specifically monitoring the logistics of transaction flows). Applied to sports betting operators, it is the identification and knowledge of the customer, who must provide the operator (at the request of the regulator) certain documents to create the account (ID, bank details, postal address verification, etc.).

B. Quantitative Data on the Sports Betting Market¹⁹⁵

Sources

The data presented in this study are estimates made by CK Consulting. They primarily come from the following documents:

- Annual reports and statistics of national sports betting regulating authorities;
- Data provided by national experts in sports bets (particularly members WLA and EL);
- Annual accounts, presentations and interviews with betting operators;
- Analyses made by research firms: Gambling Compliance, GBGC, H2 Gambling, Gambling Data;
- National legislative texts on gambling;
- WLA/EL/University analyses on illegal markets
- Internet websites specialised in sporting bets:

- ✓ <http://onlinecasinosuite.com/gambling>
- ✓ <http://www.lotteryinsider.com>
- ✓ <http://gamingzion.com/>
- ✓ <http://www.bookmakersreview.com/jurisdictions/>
- ✓ <http://www.egrmagazine.com/>
- ✓ <http://www.igamingbusiness.com/>
- ✓ <http://www.gamblingcompliance.com/>

1. Turnover (bets) and Gross Gaming Revenue (GGR)

This study is based on the evaluation of the gross gaming revenue¹⁹⁶ of the sports betting market, in other words, the net spending of bettors, once the winnings are paid out. Comparing the amounts of wagers between countries or within the same country remains delicate, simply because the corresponding odds can be very different.

To illustrate this statement, the two following concrete examples should be considered:

- Certain Asian countries are known for the size of their illegal market, part of whose activities take place on the street, with very high rates of return (sometimes, the average rate of return is above 99%). This means that the corresponding turnover figures can be astronomical (for the record, a GGR of 500 million euros (M€) and a rate of return of 99.5% yields a turnover of 100.000 M€). Many observers, who sometimes confuse wagers and GGR, compare betting operators to multinational firms such as Coca-Cola although their "real" turnover, the GGR, is comparable to that of a good midsize corporation;

¹⁹⁵ In the rest of the document, millions of Euros are represented as "M€."

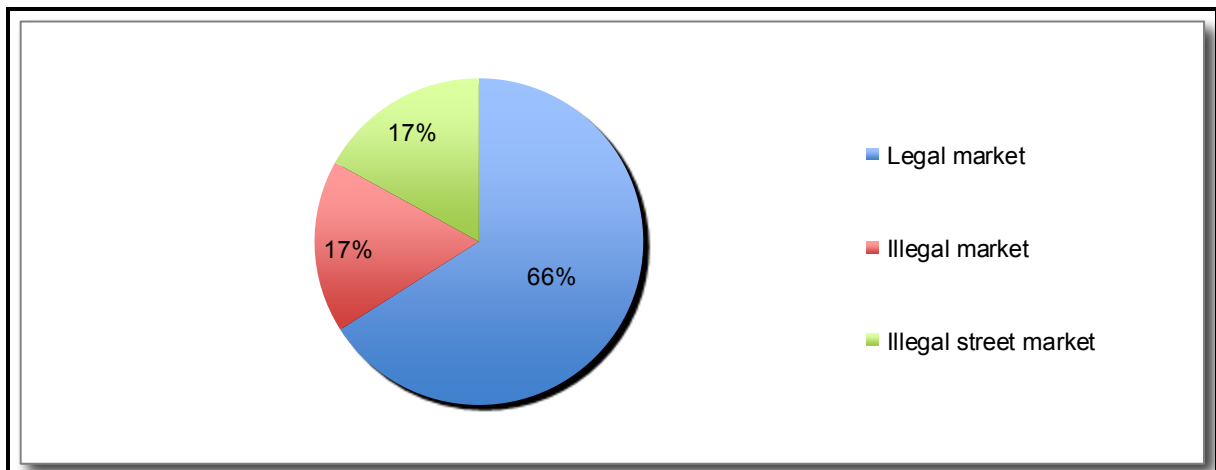
¹⁹⁶ GGR (Gross Gaming Revenue or Gross Win) is calculated as the difference between the wagered amounts and the amounts paid out to punters. $GGR = \text{wagers} - \text{wagers} \times \text{odds}$, or $\text{Wagers} = GGR / (1 - \text{odds})$.

- In a country like Germany, the GGR of the legal market is estimated at 95 M€ (with a rate of return to bettors of 54%) while the estimate of the illegal market GGR is 175 M€ (with a 90% rate of return). Thus, the illegal market is twice the size of the legal market. However, looking at wager amounts, the illegal market (1.750 M€) is almost 9 times larger than the legal market (200 M€).

2. The Global Market of Sporting Bets

The GGR of the sports betting market (excluding horse racing, greyhound powerboat and keirin bets) is estimated at 16.000 M€ in 2011:

- The legal market makes up a little slightly less than 2/3 of the total global market (10.500 M€);
- The illegal market makes up a little more than 1/3 of the total (5.500 M€).



This number includes both legal bets,¹⁹⁷ illegal online bets and illegal street bets. It is therefore smaller than the estimated figures in previous analyses.

It is very difficult to estimate the sports betting market in terms of wagers, simply because the rates of return of illegal bets are little known. In any case, below is an estimation attempt:

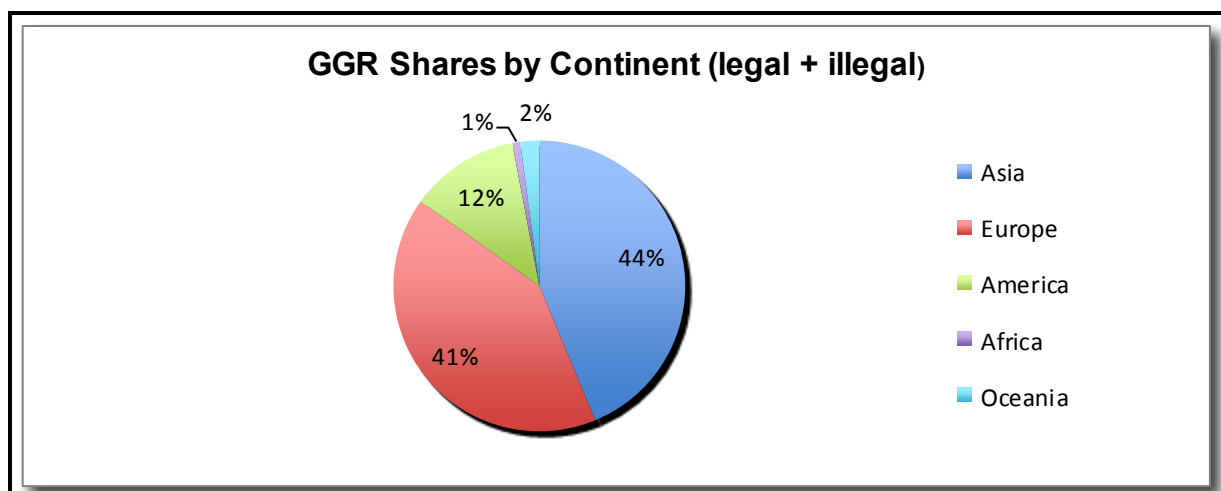
¹⁹⁷ See definition given in the Council of Europe's Convention on the Manipulation of Sports Competitions adopted on 18 September 2014 in Article 3.5.a: "illegal sports betting" means any sports betting activity whose type or operator is not allowed under the applicable law of the jurisdiction where the consumer is located".

Year 2011	GGR	Return Rates (delicate estimate for illegal market)	Wagers
Legal Market	10.500 M€ (66 %)	78 %	47.700 M€ (15 %)
Illegal Market	5.500 M€ (34 %)	98 %	275.000 M€ (85 %)
Market Total	16.000 M€ (100 %)	95 % (obtained by calculation)	322.700 M€ (100 %)

N.B.: if the GGR value for the illegal market is substituted by 96%, the illegal market volume (in bets) would be 137.500 M€, and a total market of 185.200 M€, or a little less than half of the number provided in the table above, for a GGR difference of only 2 points. This shows the extreme volatility of the “bets” variable in relation to GGR and the limited interest in reasoning in terms of bets.

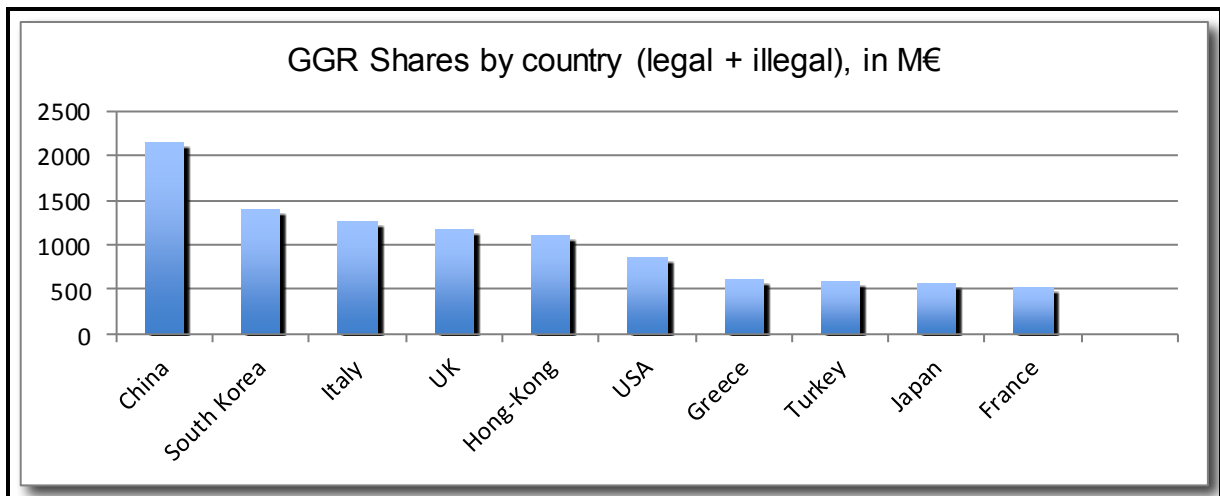
In any case, **the volume of bets on the global market of sporting bets (legal + illegal) is estimated between 200 and 500 billion euros.** In addition, although the GGR of the legal market is twice that of the illegal market, the level of bets on the illegal market is much higher than that of the legal market. This confirms the fact that the illegal market involves extremely large sums of money.

a. Distribution of the Sports Betting Market by Continent in 2011



Asia (including Turkey) has a slightly larger market share than Europe on the sports betting market (legal and illegal), with the two continents sharing close to 85% of the global market.

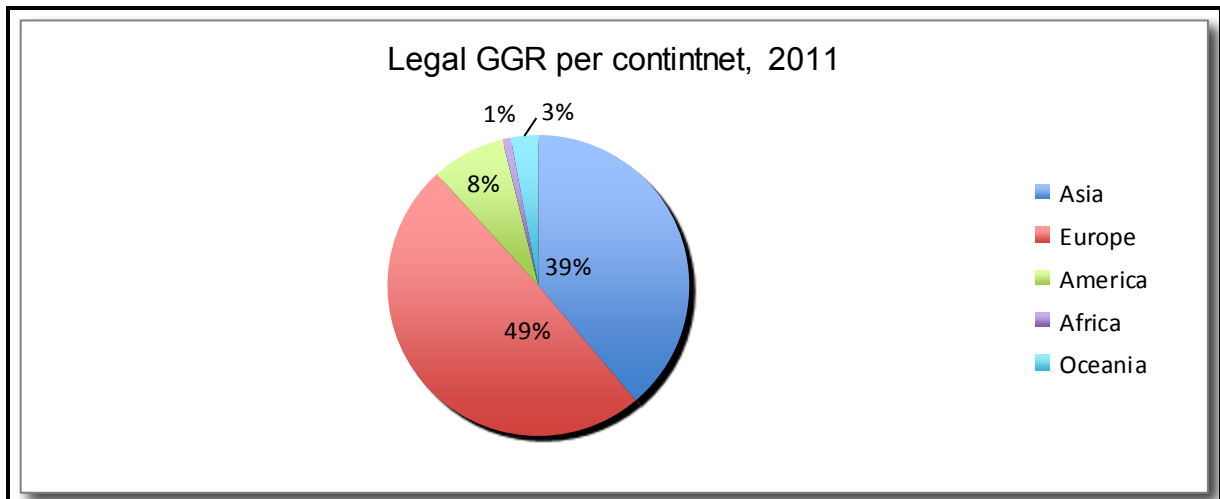
b. The Global Top 10 of Countries by GGR in 2011 (legal + illegal)



Among the top 10 countries in the world, 5 are Asian countries, and the rest are the large European countries to the exception of Germany, whose policy remained particularly restrictive in 2011.

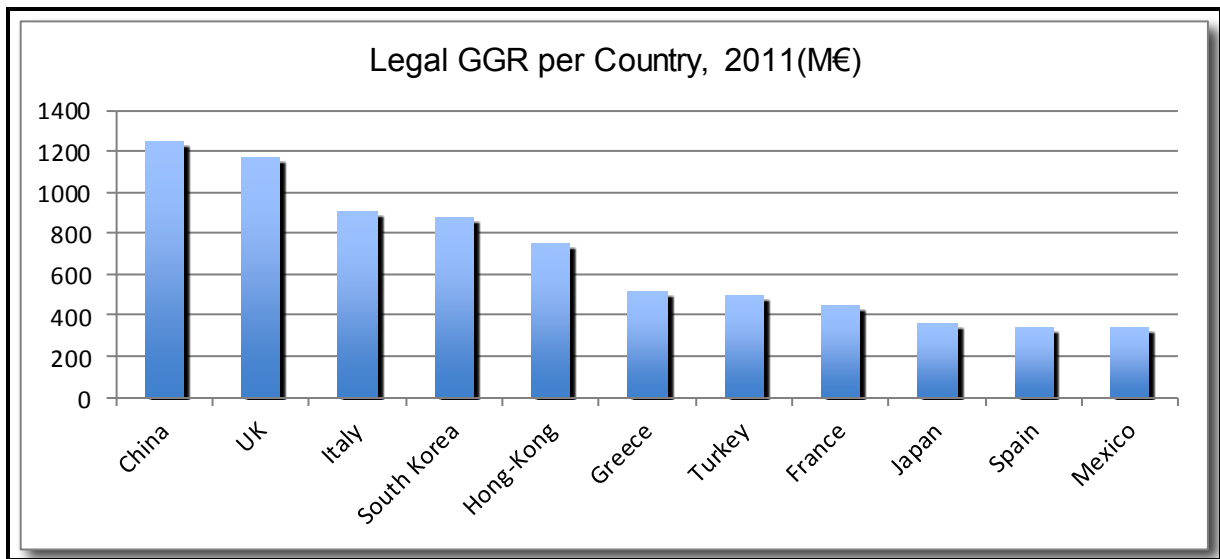
3. The Legal Market

a. Distribution of the Legal Sports Betting Market by Continent in 2011



However, if the study is limited to the legal market, Europe holds a more significant market share than Asia and makes up almost half of the global GGR

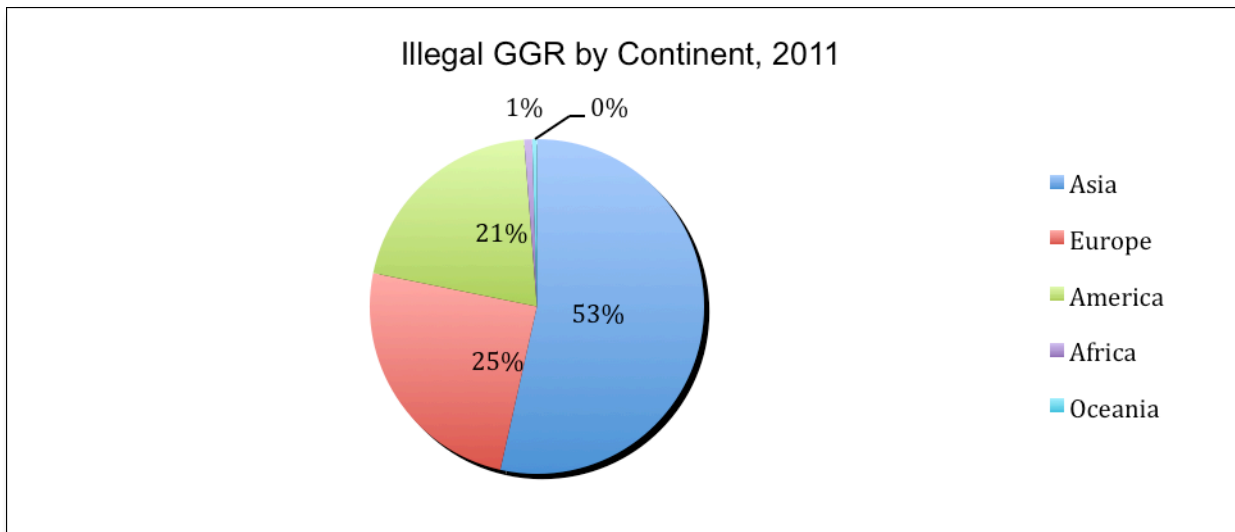
b. Global Top 10 of the Legal Market by Country in 2011



Almost 60% of this legal market is represented by State Lotteries, in both Europe (more than 2 billion euros) and Asia (more than 3 billion euros).

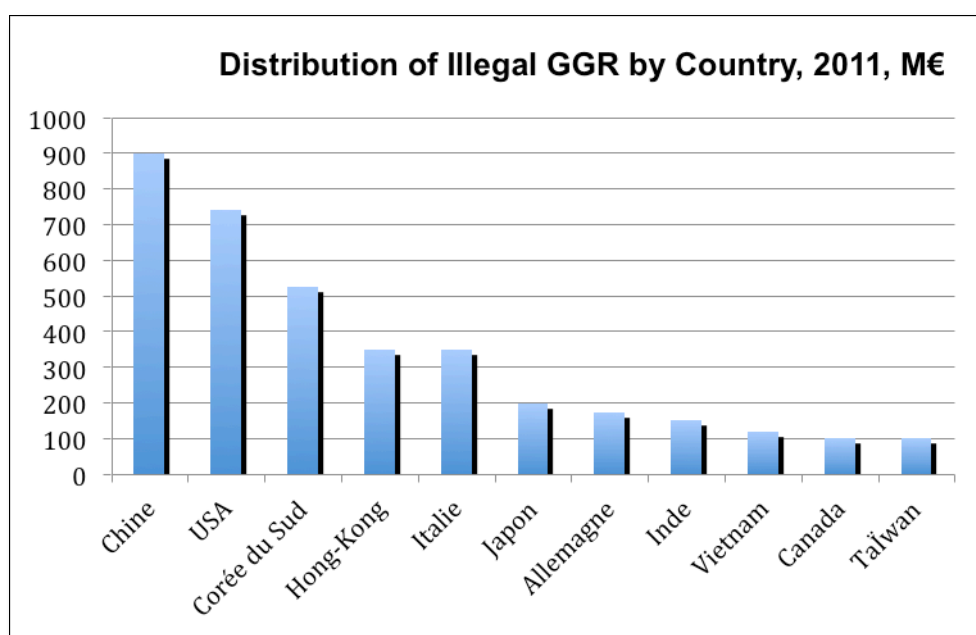
4. The Illegal Market

a. Distribution of the Illegal Market of Sports Bets per Continent in 2011



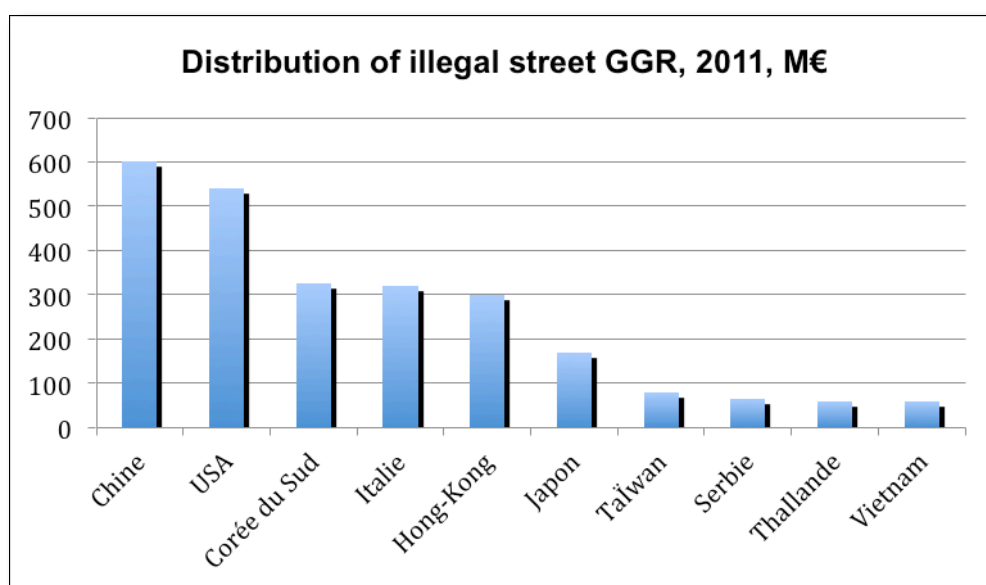
Asia and America (including the USA), have large “street” markets and make up close to three quarters of the global illegal GGR.

b. Global Top 10 of the Illegal Market by Country in 2011



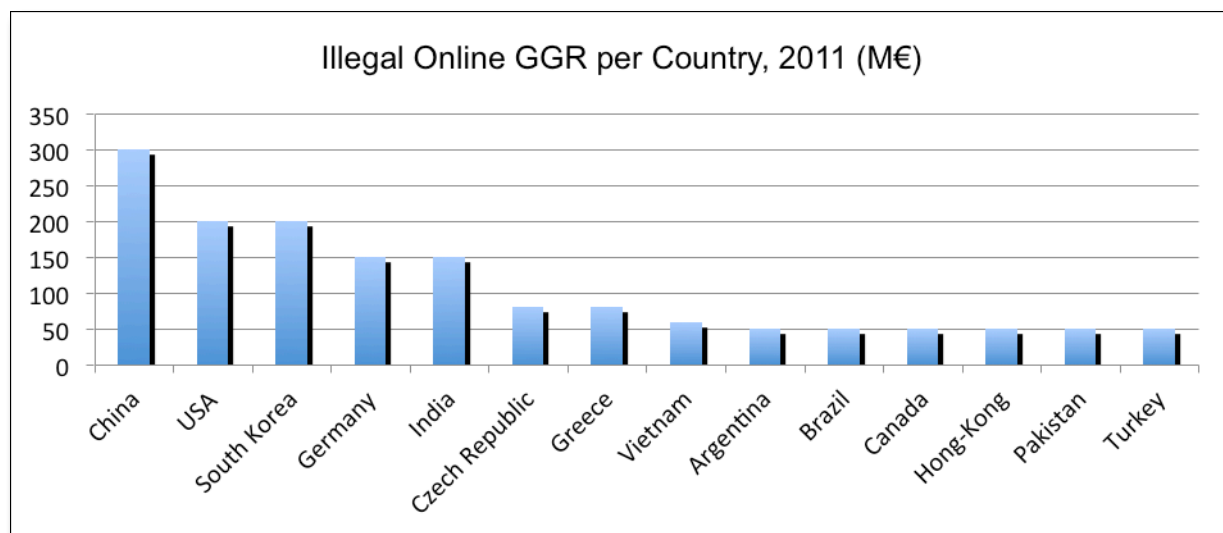
Asia, where online bets are still prohibited almost everywhere, and where numerous States do not actually combat illegal gambling, remains by far the continent that is most affected by illegality. In the USA, illegal practices are decreasing since the State is taking action against illegal sites and street bookmakers. Lastly, Italy, confronted by a reoccurrence of illegal shops and Germany, where permanent legal battles are taking place, complete the picture.

c. Top 10 of the Street Illegal Market by Country in 2011



On the American continent (because of the USA) and in Asia, the market share of street illegal bets is particularly large. In Europe, only Italy, Germany and some other Central European countries encounter this type of problem.

d. Top 10 of the Illegal Online Market by Country in 2011

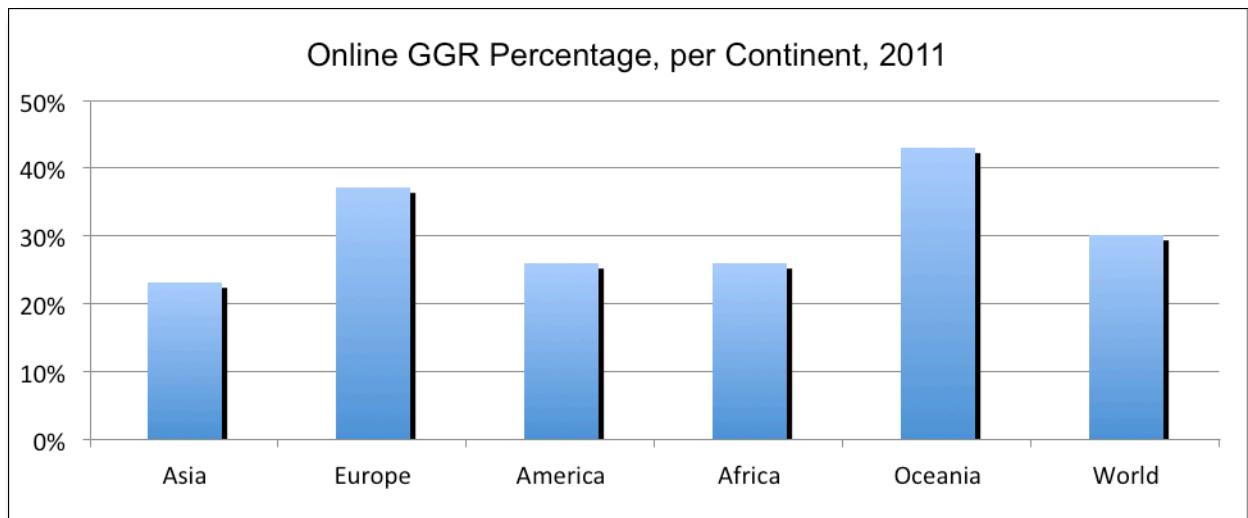


5. Distribution of the Online and Offline Markets in 2011



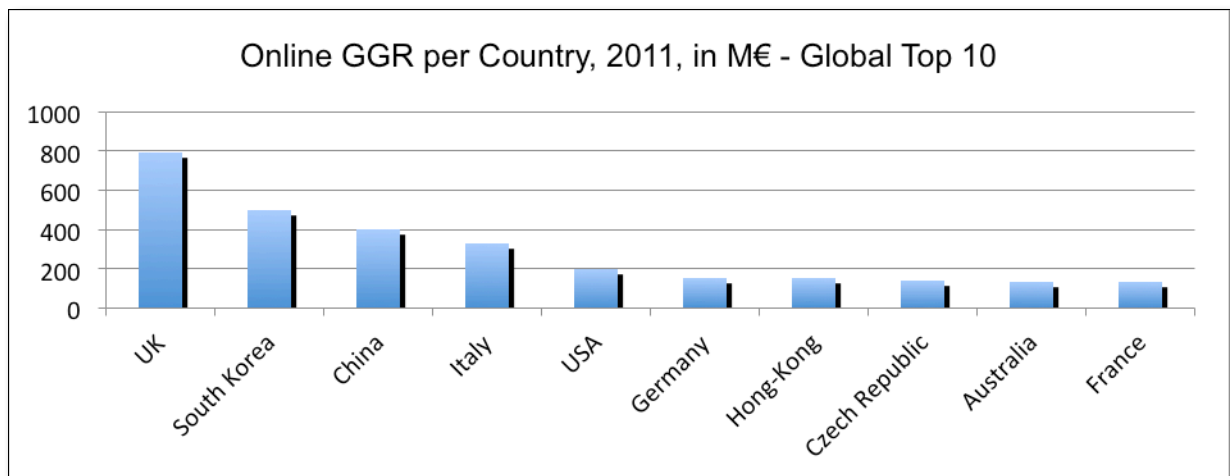
Online bets make up 30% of the global market. However, if illegal street bets are excluded, their share would amount to more than 35%.

a. Online Market Share by Continent in 2011



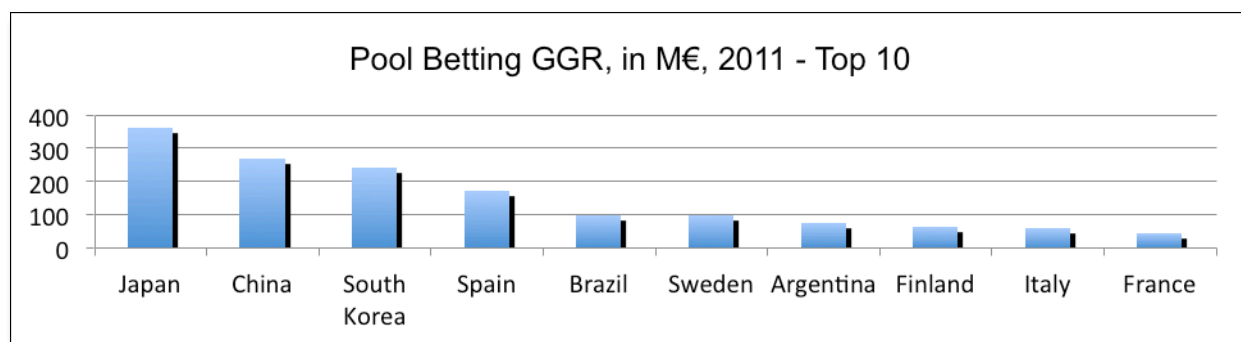
In Europe and Oceania, the Internet share is close to 40%, because of the less developed illegal market in comparison with the other continents.

b. Global Top 10 by Online GGR in 2011



Europe has a larger market share than Asia when it comes to online sports bets, but it should be kept in mind that, in Asia, the only authorised online operators, apart from the State monopolies, are those holding a licence in the Philippines Cagayan Province.

6. Global Top 10 of Pool Betting by GGR in 2011



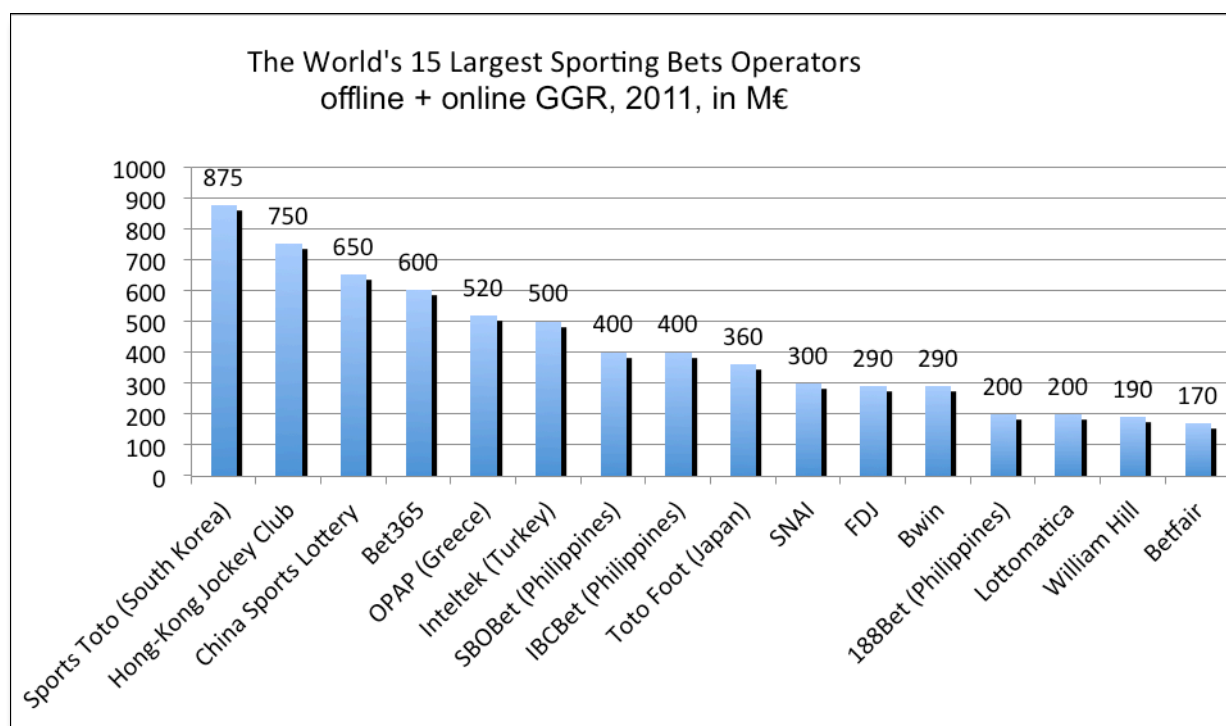
Today, pool betting represents slightly more than 10% (10.8%) of the global GGR. In twenty years, this betting form, which was previously the only form authorised in most countries of the world (with the exception of Anglo-Saxon countries), largely lost its significance.

The best example is the *Totocalcio*, which still achieved almost 3 billion euros of wagers in the 1990s in Italy, and which presently barely exceeds 100 million euros.

Although Asian countries are aided by their high population density, and occupy leading positions in the rankings, Latin and Scandinavian countries also present high numbers given their culture and history.

It should be kept in mind that concerning pool betting, the “common mass” of stakes remains the primary success factor that can ensure potential large wins for bettors.

7. Global Operators Top 15 by Sporting Bets GGR (excluding horse racing, keirin and power-boats)



N.B.: For the following operators (Bet365, SBOBet, ICBet and 188Bet), the numbers are estimates.

Paradoxically, the highest ranked operators are lotteries (7 out of the top ten operators).

It should be noted that Betfair (170 M€), SportingBet and Ladbrokes (a little less than 150 M€ each) are not found in this ranking. In addition, it was not possible to evaluate, even approximately, the GGR of 12Bet, which seems to be a key player in Asia.

C. Economic Models of Betting Operators

Betting operators can be classified in many ways. The following classifications will be used in this report:

- **State lotteries (Gtech / Lottomatica, Française des jeux, Svenska Spel, etc.):** their primary mission consists in channelling gambling activities into a secure framework and finance general interests causes, and in particular, sports. Most lotteries are State-controlled corporations. Lotteries started operating very early (in the 1930s for some of them) in relation to sporting bets through pool betting (often referred to as "Toto") before extending their offer to odds betting (from 1986 for Sweden and until this day), as a reaction to illegal competition. All lotteries are members of the WLA (World Lottery Association);

▪ **“Traditional bookmakers” (William Hill, Ladbrokes, Gala Coral, etc.):**

Generally descending from the horseracing sector, practically all of them of Anglo-Saxon origin, traditional bookmakers became diversified in sports odds betting when the English law evolved, in 1960. As private operators, they are regulated in the United Kingdom by the Gambling Commission. They initially operated in high yield points of sale networks and via telephone. At the end of the 90s, they were forced to adapt their model to the one used by “pure players” and they launched an efficient online offer, often through subsidiaries in Gibraltar, the Isle of Man or Alderney;

▪ **Pure players (Bwin.Party, Bet365, SBOBet, etc.):** these are betting operators that used the possibilities offered by the Internet to launch an offer of odds sporting bets.¹⁹⁸ Most of them are established in countries with few taxes on online gambling that understood that these corporations can at the same time generate financial resources and create employment opportunities. “Pure players” have since provided an efficient and very diversified offer to the whole world, or in any case to the citizens of countries that do not combat illegal gambling. In this way, they expanded in a few years, starting from nothing, and they currently make profits in the order of tens or hundreds of millions of Euros. Their economic model is partially based on illegality; in fact, these operators were able to expand because they generally paid very low taxes on the bets and were rarely inspected: they forced the other categories of operators to adapt. The “betting exchanges” whose world leader is Betfair, represent a specific form of “pure players”;

▪ **Illegal Operators:** as their name suggests, these operators do not exist officially. These are individual bookmakers that work in the streets without a legal existence, “Internet corporations” that are not registered to offer bets or even illegal shops that escape police scrutiny.

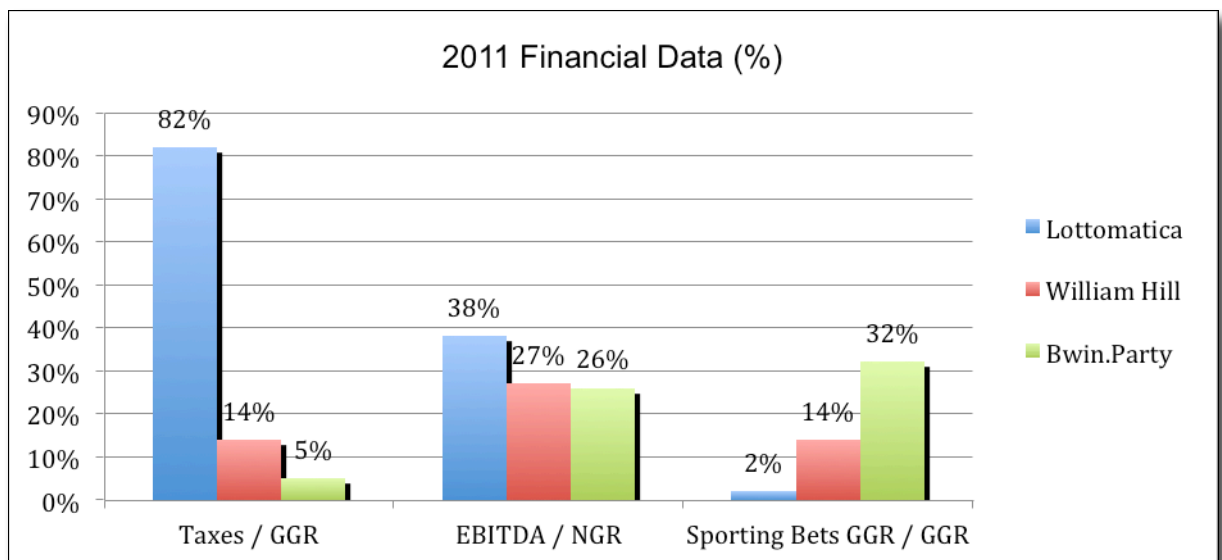
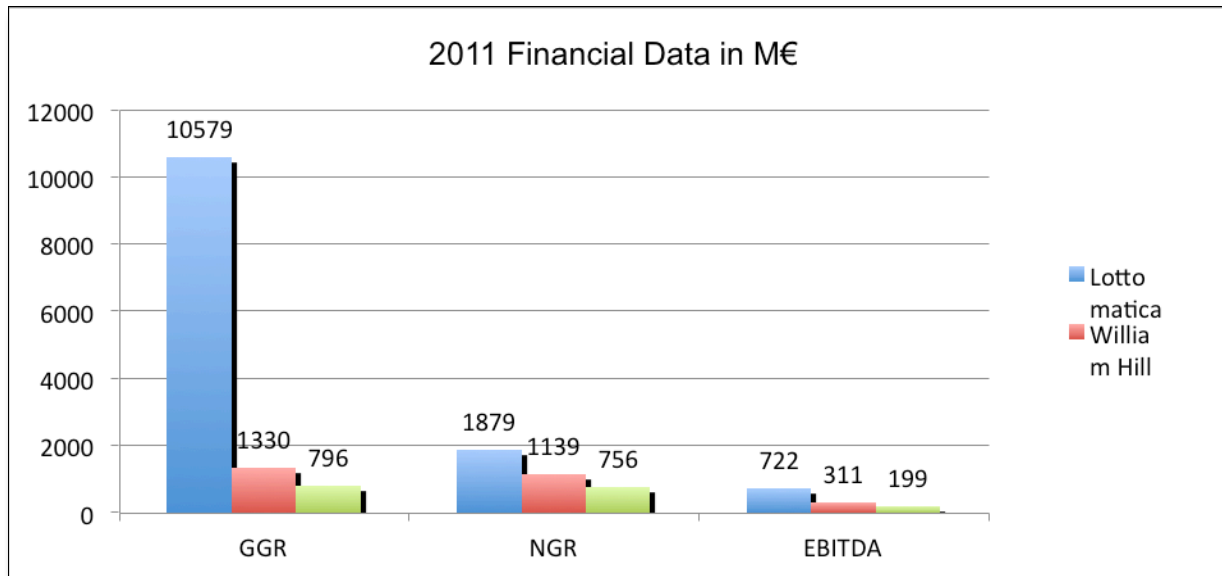
On the basis of this classification, it is possible to compare the main indicators of operators that are representative of their respective categories:

- The largest lottery operator in the world (Lottomatica);
- The top traditional bookmaker (William Hill);
- The first Internet “pure player” (bwin.party).

¹⁹⁸ The term “pure player” was originally used to designate a corporation launched and operating exclusively online.

2011	Lottomatica (excluding Gtech)	William Hill	Bwin.party
Original Form	Lottery (member of WLA (1) and EL (2))	Bookmaker (member of ABB (3) and RGA (4))	Internet gambling operator (member of EGBA (5))
Number of Employees	8.000 employees (in the whole group)	15.900 employees (including points of sale)	2.700 employees
Number of Points of Sale	113.800	2.370	0
Presence (geographic distribution of consumers)	Italy (100%)	UK (92%), Italy, Spain, USA (Nevada), Australia	Germany (22%), Italy (10%), UK (10%), France (7%), USA (6%), Spain (5%), Greece (4%), Denmark (2%), other EU (18%), rest of world (17%)
Legal Presence (estimation – % of GGR)	100%	97%	45%
Turnover	30.295 M€	20.950 M€ (all products)	3.760 M€ (sports bets)
Average GGR	65%	93,7 % (all products) <i>N.B.:</i> GGR sports bets in points of sale : 83,2%	92,3% (sports bets)
GGR	10.579 M€	1.330 M€	796 M€ (gambling) (+ 20 M€ other revenues)
Taxes Linked to Bets	8.700 M€	191 M€	40 M€ (estimate)
Taxes Linked to Games (% of GGR)	82,2%	14,4%	5%
NGR (Net Gambling Revenue) (6)	1.879 M€	1.139 M€	756 M€ (+ 20 M€ other revenues)
Costs of Operation	1.157 M€	828 M€	578 M€
EBITDA	722 M€	311 M€	199 M€
Internet Part of GGR	1,2% (estimation)	28%	100%
Proportion of Sporting Bets in GGR	1,9%	14%	32%
Other Activities	Percentage in turnover: slot machines (37%), scratch cards (33%), Lotto (22%), etc.	Slot machines (37%), horse racing bets, online casinos, online poker, etc.	Casinos (33%), Poker (26%), Bingo (8%)
<p>1 WLA: World Lottery Association 2 EL: The European Lotteries 3 ABB: Association of British Bookmakers 4 RGA: Remote Gambling Association 5 EGBA: European Gambling and Betting Association 6 NGR = GGR – Taxes linked to gambling</p>			

1. Comparison of the Main Financial Indicators Lottomatica/William Hill/Bwin.party¹⁹⁹



Lottomatica is the world leader in gambling games (excluding casinos). This company has a very high GGR thanks to gambling, in a single country; Italy. The sports betting activity remains completely marginal in the group's share (less than 2%). In return for the exclusive licence (monopoly) that it holds for Lotto and scratch cards, Lottomatica pays almost 9 billion Euros (82% of the GGR in 2011) to the Italian State.

¹⁹⁹ EBITDA: Earnings before Interest, Taxes, Depreciation, and Amortisation. It designates the benefits before interest, taxes, amortisation and fixed assets provisions (but after client inventories and amounts receivable). It is similar to the GOS (Gross Operating Surplus) used in France, with the difference that the latter is calculated before provisions for operation (earmarkings and provision reversals on client inventories and amounts receivable).

Considering the economies of scale produced by its size, Lottomatica is more profitable than its bookmaker and online pure player competitors (EBITDA/NGR of 38% vs. 26 or 27% for the other two). Lastly, the significant turnover generated by the group's numerous slot machines should be noted, although these machines increase additional risks of addiction.

William Hill is a British bookmaker established in 1934 which today generates the largest part of its revenues in the United Kingdom (92%). It expanded significantly 10 years ago thanks to the growth of two segments: slot machines (FOBT or AWP) and online games. Sporting bets (horse racing excluded) curiously only represent 14% of its activity. It should be noted that for some years, bets (sports bets and horse racing bets), on their own, have not been able to ensure the profitability of points of sale which are saved by the installation of slot machines, which are criticized for their capacity of creating addiction risks.

Lastly, Bwin.party, born from the merger of Bwin and PartyGaming in 2011, is currently the largest online pure player operator worldwide. In less than 15 years, this Gibraltar-based corporation is publically traded on the London Exchange and is quickly catching up to the traditional gambling corporations. Often wrongly referred to as a sports betting operator, this corporation in fact operates primarily on the casino segment (which makes up 33% of its GGR). Sporting bets are consumer appeal products that draw new clients before getting them to play other games. The economic model of Bwin.party is particularly attractive thanks to, mainly, its uncostly presence in countries where its legality is contested (almost half of the GGR was illegal in 2011, although the company is trying to acquire licences when possible). With high tax levels for gambling such as in the United Kingdom, Bwin.party reportedly loses 40% (approximately 80 billion Euros) of its EBITDA. This explains why online pure players of the gambling sectors, in particular those that have not reached the critical size of Bwin.party, are not always in a hurry to have legal practices.

2. Specific Data for Live Betting (or In-Play Betting)

This market segment is still rapidly growing, although data from operators are becoming scarcer. For certain operators, live betting makes up more than 70% of their total GGR. According to a report by Gambling Data (2012),²⁰⁰ the leader in this field is Bet365 which, in 15 days towards the end of 2012, offered 636 sporting events in 21 different sporting disciplines.

The GGRs observed in live betting are higher than "pre-match" betting GGRs (typically more than 95% v. less than 90% per bet). The goal of live betting is to get clients to bet more thanks to a broad diversity of bets, which often has stronger ties to randomness than to skill. For example, in its annual report, William Hill states that it is the only betting operator to offer point by point bets on all the matches in the Wimbledon tennis tournament.

²⁰⁰ Gambling Data, *European Regulated Online Markets – Data Report*, July 2012, available at: [http://www.gamblingdata.com/files/EuropeanRegulatedMarketsJuly2012_0.pdf].

D. The Decrease of the Costs of Sports Betting

Although Antigua and Barbuda authorised, since 1994, online games via a licence system on the basis of the Free Trade and Processing Act, online games activity remained poorly developed. Little by little, this activity progressed: although only 1% of British people made online bets linked to sporting events in 1999, and only 4% in 2007, this number reached 10% in 2010 (less than one in seven players).²⁰¹ The transformation of the sports betting industry following the development of the online offer was in fact, significant. To understand its significance, it is essential to understand the impact on the prices of bets, whose collapse transformed the stakeholders, their economic models and the regulation.

The globalisation of bets caused a significant and fast cost decrease. This phenomenon is a result of two distinct trends: on the one hand, the development of the Internet gave bettors access to betting operators located outside the national framework; and on the other hand, numerous betting operators, confronted with strong competition, tried to develop rapidly by avoiding the national regulations of most countries where they offered their services. The technical means thus appeared at the times where States were not yet legally equipped to combat operators that they considered as being illegal. These new operators that can be accessed online offered their bets at much lower prices.

Cost of Bets and Opportunity Costs

Alongside the GGR, one may consider the opportunity cost for the bettor, which takes into account that which the bettor gives up in order to play: for instance, if the bettor needs to go to the racetrack to bet on a horse, the betting cost increases. If it is necessary to travel abroad because bets are effectively prohibited in the bettor's country, the opportunity cost becomes dissuasive, except for pathological gamblers. In contrast, it is easy to understand why the development of online bets changed habits: it significantly reduced the opportunity costs for bettors, to a point that the transaction costs are currently comparable to those in finance.

Uncertain but probable costs should sometimes be taken into consideration: for example, the illegality in certain countries such as Belgium or Italy causes risks of criminal prosecution. Although not certain, it is clear that the increase of their probability burdens the opportunity to bet. This is why an intensification of the efforts to combat illegal bets will be observed (all other things being equal) through an increase in the opportunity cost and therefore a decrease in the volume of bets. This illegality also exposes bettors to the risk of not receiving their winnings, since they do not possess any legal course of action against illegal operators.

²⁰¹ UK Gambling Commission – British Gambling Prevalence Survey, 1999, available online at: [<http://www.gamblingcommission.gov.uk/pdf/Gambling%20behaviour%20in%20Britain%20results%20from%20the%20BGPS%202000%20-%20Jun%202007.pdf>], p. 20.

UK Gambling Commission – British Gambling Prevalence Survey, 2007, available online at: [<http://www.gamblingcommission.gov.uk/PDF/British%20Gambling%20Prevalence%20Survey%202007%20-%20Sept%202007.pdf>], p. 9.

UK Gambling Commission – British Gambling Prevalence Survey, 2010, available online at: [<http://www.gamblingcommission.gov.uk/PDF/British%20Gambling%20Prevalence%20Survey%202010.pdf>], p. 31.

But what does betting cost mean? In order to precisely define this concept, some math is involved, but it is possible to give an intuition of the phenomenon by mentioning the various costs incurred by the operator: for example, a new tax (whether levied on bets, the gross gaming revenue, *i.e.* the total of bets minus the winnings, or even on the winnings) would increase the bets/potential winnings ratio. Generally, the cost of bets depends on the economic profitability of the operator, but also on its pricing policy. One might think that a monopolistic operator can impose higher prices than an operator in a competitive setting. This was true in particular before the advent of globalisation, when national operators did not fear online competition: they therefore imposed high prices that resulted in very low return rates for bettors (50% for most pari-mutuel bets).²⁰² The return rate is currently between 92 and 96% in the United Kingdom, and is probably higher than 98% for Betfair (as a betting market).²⁰³

The rate of return to bettors being the reverse of the betting price, it is possible to evaluate the fall in prices linked to globalisation by comparing the rates of return before (50%), *i.e.* around 1990, and after (85 to 99%), meaning today. This method would lead to estimating that the fall in prices is close to 50%. Such a result should, on its own, preoccupy authorities: in fact, the maximum return for traditional laundering methods²⁰⁴ was close to 70%; a higher return rate would thus draw the interest of criminals, who could use bets to launder their dirty money.²⁰⁵ This is true in particular for the 1x2 betting formula which offers advantageous odds.²⁰⁶

Let us consider an actual example: with odds of 2.32 (victory for team 1), 3.10 (draw) and 2.70 (victory for team 2), a player can distribute his bets in a way as to maximise his winnings: he will be sure to get 88.96 € for an amount of 100 € of placed bets (38.35 € on a victory for team 1; 28.70 € on a draw and 32.95 € on a victory for team 2).

Money launderers choose the best available offer for each 1x2 event (for example, by using oddschecker.com). Academic David Forrest showed that a punter betting on the Premier League's favourites during the 2010-2011 season, on globally renowned betting sites, had a real rate of return of 99.3%.²⁰⁷ This constitutes a bonanza for criminals looking to launder money.²⁰⁸ In addition, the gambling sector has been under stricter scrutiny from the authorities responsible for combating money laundering.

²⁰² C. KALB (2012).

²⁰³ C. KALB, P. VERSCHUUREN, *Blanchiment d'argent, un nouveau fléau pour les paris sportifs?*, *op. cit.* Betfair is also a betting operator in less interesting conditions.

²⁰⁴ Tracfin cited by C. KALB, P. VERSCHUUREN, *Blanchiment d'argent, un nouveau fléau pour les paris sportifs?*, *op. cit.*

²⁰⁵ E. DAOUD, J. FLEURET, "Blanchiment et paris sportifs", *Revue Lamy Droit des Affaires*, n° 83, 2013, pp. 81-85.

²⁰⁶ Win (Team 1)-Draw-Win (Team 2).

²⁰⁷ P. BONIFACE, S. LACARRIERE, P. VERSCHUUREN, *Sporting Bets and Corruption*, IRIS, 2012.

²⁰⁸ To illustrate this bonanza, the following example should be considered: in order to launder money, I bet a total of 100 divided among the three possibilities; (P1= victory of team 1; P2= Draw; P3=Victory of team 2) one of them is the winning possibility; I get 99.3% thanks to this win on one of the three bets; I can explain to the authorities that I bet 38 and won 99.3; all that remains to be explained is the origin of the 38, and if this is done, I will have laundered 61.3 of illegal money (obviously, I do not tell the authorities that I also bet 62 on the two other possibilities, which did not earn me any money).

In fact, the fall in prices can be much steeper if one is to take into consideration the opportunity costs to bet on a match in particular. Indeed, until the 2000s, most betting operators forced bettors to bet on 3 matches (Great Britain), 9 (Italy even after 2000), 14 or even 20 matches. If one keeps the average number of 10 matches with a return rate of 50%, it results that one should bet $2 \times 10 = 20$ to get 1 on average on a match; with a return rate of 98% it is currently sufficient to bet 1.02 in order to get back 1. Therefore, the average cost of bets fell almost 50%, but the cost to bet on a given match fell almost by 95%. Other factors also explain the fall in opportunity costs: in the past, it was necessary to go to an office in order to place a bet (and lose several minutes by doing this), websites allow to place bets in a few seconds. This considerable evolution should have two consequences: the increase in the demand for bets, on the one hand, and, on the other hand, an increased interest in manipulating a match in order to obtain winnings by betting.

On the demand side, the net cost of the bet is not the only factor to be taken into consideration: there may be hidden opportunity costs, linked to cognitive (computer literacy) or cultural (a lack of trust in the newly established operators, language issues, *etc.*) barriers that are linked to the new offers. The notion of opportunity costs allows in particular to understand why certain bettors hesitate to make use of the new technologies that apparently lead to lower bet prices. These traditional betting habits come with sociability practices linked to sports bets. A bettor meets friends at the local pub to talk about sports, read the press, watch the games: this “consumption of bets” cancels out the opportunity cost linked to travelling to the place of the bet, or even gives it a negative value. Before the Internet became popular, there existed a population of regular bettors that gambled within this framework, and that was not necessarily attracted by a more competitive offer, except in the case where the whole reference group switched to a new operator.²⁰⁹ The survey done by ARJEL on the sociology of bettors in March 2013²¹⁰ shows that online bettors, and even more so sports bettors have a significantly higher level of education and a lower age compared to the national average. This confirms the existence of cognitive barriers for online games. Therefore, it is not clear that the advent of online offers and the correlative fall in betting prices have considerably changed the behaviour of enthusiast that already played. By contrast, the new offer will certainly reduce the share of traditional enthusiast, since it attracts new audiences. In addition, among the new players, there are more “rational” players (see box below on the mutation of the sports betting market), and among them, potential fraudsters.

²⁰⁹ See box below on the distribution of bettors.

²¹⁰ [<http://www.arjel.fr/IMG/pdf/sociologie-joueurs-20130319.pdf>].

Distribution of Bettors

10% of the bettors place 2/3 of the bets.

1) The Massachusetts lottery published in 2004 a study on the distribution of bettors which yielded the following results:

- 67% of the inhabitants of this State gamble compared to 59% for the whole country;
- 11% of bettors placed 69% of the wagers (2.730 US\$ per inhabitant per year);
- 22% of the players placed 23% of the wagers (442 US\$ per inhabitant per year);
- 67% of the players placed 9% of the wagers (73 US\$ per inhabitant per year).

2) The figures regularly published by ARJEL confirm the same tendency (see for example, the following link: <http://www.arjel.fr/IMG/pdf/2013T4.pdf>):

- 1% of online players place, depending on the product, between 28% (horseracing bets) and 58% (poker tournaments) of the wagers;
- 10% of online players place, depending on the product, between 70% (horseracing bets) and 91% (poker tournaments) of the wagers.

3) However, these data are either dated (2004), or issued from particularly regulated markets. "Very large players" are neither located in France or in Massachusetts.

Information collected from "fairly" responsible operators, established in more exotic and less regulated countries (such as the Isle of Man, Gibraltar, Malta and especially the Cagayan province), shows that "big players" wager hundreds of thousands of euros, and even millions of euros per week. With these operators, it is not uncommon that 1% of the bettors place 2/3 of the bets (and sometimes 10% of bettors place 90% of the bets).

Numerous decision-makers in the gambling world have not yet taken stock of the extent of this phenomenon. Sometimes, States create complex laws for a minority of players (in France, when evoking the 1% of sports bets bettors, less than 1.500 persons having placed bets during the trimester in the whole country are concerned), some of whom are money launderers or manipulators. In a few years, decision-makers will realise that they took part in the creation of a new totally uncontrollable and uncontrolled financial market. Recourse to anonymous payment methods (prepaid cards for example) exacerbates the phenomenon.

Briefly stated, recreational gambling does not only concern lotteries. Other operators seek players who place very high bets, which are profitable, and fight to keep them, regardless of the significant dubiousness of their activities. Therefore, a horse racing operator may sometimes admit that he is astonished by the amounts spent by certain foreign big players that invest millions of Euros. The words of an identified individual were the following: "better us than other operators, I will not refuse to offer these players our services."

4) The example of Sportingbet (see its annual report / 1st trimester 2010), a transparent operator currently owned by William Hill and GVC Holding, illustrates this phenomenon well:

- 3% of players constitute 52% of the operator's gross gaming revenue;
- 13% of players are responsible for 83% of the gross gaming revenue;
- Occasional players (87% of active players) do not constitute an important source of revenue for the operator.

It should be noted that for certain operators, the distribution of big players is much more pronounced.

The Transformation of the Sports Betting Market: from a Market of Amateurs to a Market of Professional Investors

Until 2000, taking into account the restrictions affecting the sports betting market, almost all bettors gambled “for the fun of it”.

This situation was mainly linked to the characteristics of the products offered by operators:

- In most of the world's large countries, sporting bets were either prohibited or operated through a monopoly under a mutual form (United States, except Nevada and Delaware, Asia, Brazil, Germany, France, Spain, Italy, *etc.*). The *Totocalcio* (Italy) and the *Quiniella* (Spain), both launched in 1946, were the global leaders of this market. In order to win a bet, a punter had to correctly determine the winners or exact scores of a large number of sporting events (often more than ten). Consequently, this product associates chance and skill, since it is very difficult to anticipate the results;

- In certain countries where fixed odds bets were already authorised (Great Britain, Sweden, *etc.*), betting possibilities remained very limited. Live betting did not exist, and even the most ambitious bookmakers barely offered a dozen different betting formulas for a given match;

- The return rates for bettors remained low, most of the time below 70%, in any case below 80%, even for odds bets. The possibilities of arbitrage were consequently inexistent. It was more interesting to “play the stock market” in order to make money.

Since its advent, the Internet transformed the structure of the sports betting market through numerous new possibilities. In certain countries, it is now possible to bet on any sport, any competition and any stage of the game. The rates of return for bettors are so high that the Internet currently attracts “traders” and arbitrage professionals, but also money launderers and criminals hoping to get rich by manipulating sporting events. They only represent some thousands of persons in large sports betting countries but potentially make up a large part of the operators' turnover, even in the most regulated countries. Many experts think that in certain jurisdictions, more than half of the wagers are linked to a “grey” market. These professional bettors benefit from the same opportunities as those offered by the financial derivatives markets, but without being subjected to the same constraints and regulations. In most countries, the revenues issued from sporting bets are taxed at the source but are not subject to income tax.

This situation is more aggravated on the Asian betting market which sometimes presents specific characteristics: loan bets, very large betting volumes, in particular for live betting, very low margins and therefore extremely high rates of return to bettors, a great number of bets on secondary football leagues, payment of winnings some hours after the end of the event.

Under these conditions, two models exist today. One involves recreational betting, where a large part of the population, and in particular sports enthusiasts wager reasonable amounts. The other model is directed towards poker professionals, sports betting arbitrage specialists and big casino gamblers. The evolution of the sports betting offer, carried by the Internet, shifted the scale in favour of the second model. The Internet may have created a new partially illegal and unregulated financial market.

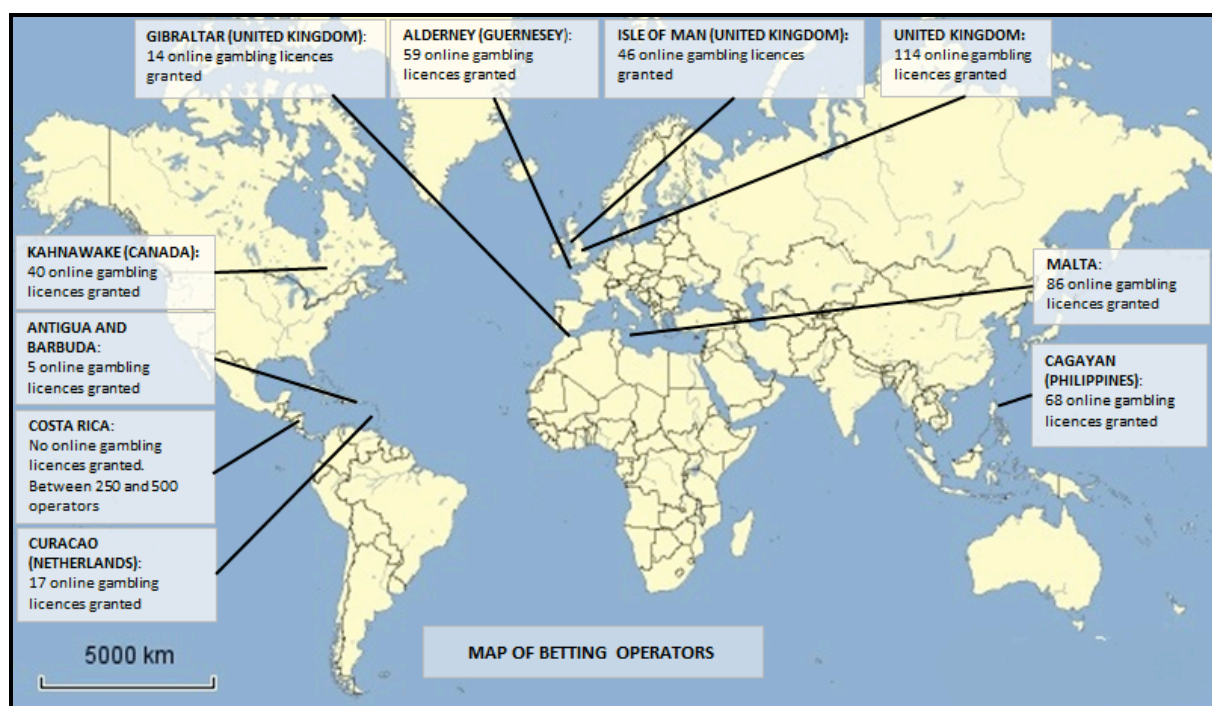
§ 2. The development of the Sports Betting Market Changed the Regulatory Framework in Many Countries

The recent evolution of the sports betting market, mainly linked to the advent of the Internet, led numerous countries to changing their regulation in the field of gambling, and specifically sporting bets. The main tendencies will be studied by order of appearance (**A** to **C**).

A. “Offshore” Countries, Havens for Most “New Betting Operators”

Certain countries chose to use the technical possibilities offered by the Internet to attract operators, thus creating jobs and increasing the level of tax revenues linked to sporting bets. Their engagements are fairly simple: they offer operators the possibility to set up within their territory, and offer their services anywhere, whether in the host State or elsewhere. These countries have therefore implicitly created the organisational conditions of an illegal global market, while providing regulations that are often well written. They have also created regulatory authorities tasked in particular with granting authorisations to the operators that comply with the defined criteria.²¹¹

The following map, prepared by Iris,²¹² shows the countries that have become “sports betting havens”:



²¹¹ See for example [https://www.gibraltar.gov.gi/images/stories/PDF/gaming/gambling_ord_2005.pdf] for Gibraltar or [<https://www.gov.im/gambling/regulatory.xml>] for Isle of Man. In practice, conflicts of interests are frequent (see Part 2, Title 1, Chapter 2, § 4).

²¹² Iris: Institute of International and Strategic Relations.

The countries found on the map above have succeeded in attracting the large majority of betting operators that were established since 1995 on the Internet.

It should be noted that the majority of the countries concerned are British possessions or former British colonies. Therefore, it can be presumed that a change in the British legislation could solve part of the problem, as is the case concerning tax havens.

First and foremost,²¹³ it is important to explain the nuances surrounding the legislations of these “offshore” centres and to understand why betting operators settled there.

Today, there are approximately 50 tax havens in the world. According to the OECD, three main criteria allow to describe “tax havens”:

- Low or inexistent taxes;
- An absence of transparency in the tax regime;
- An absence of information exchange concerning taxes.

However, the notion of “tax haven” remains relative. In fact, each State can have its own definition of tax havens. A country may constitute a tax haven from the perspective of a State A, since the tax system is more attractive there, but not from State B’s perspective.

In addition, these countries do not only attract operators with advantageous tax regimes. The offshore system presents other particularities such as bank secrecy, soft regulations of economic activity, lack of transparency of the financial system or the absence of cooperation with other States in criminal matters.

Lastly, certain jurisdictions specialised in hosting a specific type of actors, mounting a type of operations or even giving an edge for companies (banking secrecy, non-extradition, judicial immunity, *etc.*). Thus, jurisdictions such as Malta or the Cagayan province in the Philippines have become global capitals of gambling and online betting.

According to the IMF, financial havens drain approximately 5.500 billion Euros of financial assets with tax evasion, through roughly 4.000 offshore banks and 2.4 million shell companies.²¹⁴

The NGO Tax Justice Network considers that the amounts in play are even bigger, reaching between 16.344 and 25.000 billion Euros, a number equivalent to the GDP of the United States and Japan put together.²¹⁵

²¹³ Paragraph prepared in partnership with Iris in the framework of the White Paper: Money Laundering, a New Plague for Sporting Bets?, *op. cit.*

²¹⁴ “Offshore Leaks: les chiffres effarants de l’évasion fiscale”, *L’Expansion*, 4 April 2013.

²¹⁵ [<http://www.financialsecrecyindex.com/>].

This represents one third of the global financial resources and an amount that could generate between 150 and 220 billion Euros of tax income per year in all countries of the world. This is more than the public aid to development provided by the OECD countries, which fell to 100 billion Euros in 2012.

In comparison, it is important to note that the amount of illegal bets is estimated in terms of GGR at 5.5 billion Dollars and in terms of wagers at 275 billion Dollars.

Contrary to what is very often said or write, the offshore system is neither on the side-lines nor in the shadows of globalisation. In fact, it is one of international finance and economy's lungs. It played a considerable role in the 2008 crisis, and although this system cannot easily be questioned (the post 2008 anti-offshore ambitions are still harmless), because it has become essential.²¹⁶

B. Countries that Extended or Adapted their Regulation on Bets to Online Activities

When the first online games made their appearance,²¹⁷ national legislations did not provide a framework for this phenomenon. Since most existing laws contained general prohibitions with a certain number of limited exceptions, online games were, in principle, prohibited. Little by little, States realised that such a prohibition did not constitute a sufficient reaction. Numerous countries have therefore adapted their laws in such a way as to take the Internet into consideration, in order to fill a legal gap or simply in order to allow national operators (often in a monopolistic position) to cope with an increasingly perennial illegal competition.

Below is a non-exhaustive list of countries that adapted their laws on sporting bets to the advent of the Internet:

- South Africa changed its existing regulations many times (the National Gambling Act of 1996, then 2004, a new draft bill is currently being studied);
- Belgium (1999);
- Australia (Interactive Gambling Act 2001);
- Switzerland (2005);
- The United Kingdom (2005);
- Russia (2006 and 2011);
- USA (2006);
- Poland (2009);
- China (2010).

²¹⁶ See A. DENAULT, *Offshore. Paradis fiscaux et souveraineté criminelle, La Fabrique*, 2010; and G. ZUCMAN, *La richesse cachée des nations. Enquête sur les paradis fiscaux*, Seuil, 2013.

²¹⁷ N.HOEKX, "The Particularities of Online Gambling Games in Europe", in: *Colloque européen sur la réglementation des jeux d'argent en ligne en Europe: état des lieux et perspectives*, under the direction of M. TRANNOIS and B. VINCENTEAU, University of Cergy-Pontoise, 28 January 2014, forthcoming.

In addition, without enacting a completely new law, numerous countries authorised their national operators to expand their very restricted offer of bets, often limited to pari-mutuel bets. The aim was to respond to the threat of bets that are illegally offered to the citizens of the various countries by offshore operators.²¹⁸ Under these circumstances, Germany launched an offer of fixed odds bets in 1999, followed by Singapore in 1999. Japan authorised pari-mutuel bets on football in 2001, whereas France and Hong-Kong launched their fixed-odds betting offers in 2003. Little by little, most countries where the sports betting market was strictly regulated, and where fixed odds bets were prohibited, opened up on the subject. In certain cases, this change was progressive since national regulators were worried about the potential risks linked to fixed odds betting, in particular regarding the possibility of manipulating events. In many European countries, it was not possible to choose the winner of a single event: bettors had to combine their bets on at least two to three events. Today, certain countries such as Canada are still cautious and do not allow single bets.

C. Countries whose Laws Evolved under the Influence of European Union Law

To this day, there is no regulatory framework or global policy concerning online betting in Europe. The European Union cannot act beyond its prerogatives and does not currently have the power to regulate the online gaming sector globally. Therefore, in the area of regulating online gambling, Member States are guided by the negative framework²¹⁹ made up of the freedoms of the Treaty on the Functioning of the European Union and their interpretation according to the ECJ.

In an elaborated case law,²²⁰ the Court of Justice established the limits within which Member States can act. This case law shows that Member States have a large margin of appreciation. Although considered as a service within the meaning of the treaty, the operation of gambling platforms was never seen as a “traditional” economic service given the sensitive nature of the sector. Member states can freely organise their market by choosing the system (total prohibition, monopoly, licencing system) that is best suited to achieve the objectives pursued on their territory. Nonetheless, if a member State chooses a system limiting the free provision of services (which is almost always the case), its regulation should comply with certain requirements. Restrictive measures should be justified by a compelling general interest reason and abide by the conditions laid down by the Court of Justice’s case law.²²¹

²¹⁸ See *supra* Part 1, Title 1, Chapter 2, Section 1, § 2, A.

²¹⁹ N. HOEKX, "Les spécificités des jeux d'argent en ligne en Europe" in: *Colloque européen sur la réglementation des jeux d'argent en ligne en Europe: état des lieux et perspectives*, *op. cit.* (forthcoming).

²²⁰ See *infra* Part 1, Title 1, Chapter 2, Section 2.

²²¹ See *infra* Part 1, Title 1, Chapter 2, Section 2.

The Court of Justice held that a national legislation cannot guarantee the achievement of the objective laid out unless it truly works toward reaching it in a coherent and systematic way. It also held that a Member State's gambling policy should be considered in its entirety in order to evaluate the coherent and systematic character of the achievement of the chosen objectives, but that establishing diverging regimes in different sectors is allowed. However, a horizontal coherence between sectors should exist. In addition, Member States should take into account the fact that a service provider is already subjected in another member State to a regulatory system of control and sanctions. However, there is no obligation for a State of the Union to recognise the licence granted by another State.

Under these conditions, when the European Commission considers that a State is abusing its power of appreciation when putting in place limitations that it deems to be unjustified, the Commission can initiate a violation proceeding against the country concerned. However, these violation proceedings are often sparked by complaints, in particular coming from gambling operators. For certain experts, the validity of this system is dubious:

"The role of unscrupulous lobbying organisations who shamelessly and successfully work behind the scenes of the Commission is doubtful. The complaints system as it exists today is a godsend for anyone not respecting the laws of a Member State. The claim that a criminal law or regulation measure does not comply with European law is used to ignore serious regulations and turn judgments of the Court of Justice to their advantage. This means that some operators do not feel bound by decisions having a democratic legitimacy. All the lawbreaker has to do is to complain to the Commission to initiate an action of the Commission, whose attitude creates confusion and doubt about the criminal injunction."²²²

In this complex and controversial legal context, several countries have changed their legislation on online bets, under direct or indirect pressure from the European Commission:

- Italy changed its legislations many times between 2006 (Barsani Decree-Law) and 2011;
- France opened the online betting market to competitions in 2010;
- Spain enacted a law on online bets in 2011, followed by Denmark in 2012;
- Germany still faces a particular situation, torn between the desire to establish a federal law on online gambling in 2014 and the problems linked to the autonomy of some States, beginning with Schleswig Holstein, which has already started granting online gaming licences.

²²² P. NAESSENS, "Le groupe d'experts de la Commission européenne: positionnement stratégique à cause d'un changement de paradigme ou un nouveau conflit d'intérêts financiers," in: *Colloque européen sur la réglementation des jeux d'argent en ligne en Europe: état des lieux et perspectives*, *op. cit.*, (forthcoming.)

It may therefore be stated that the issue of the liberalisation of online gambling was raised mainly within the European Union, under pressure from some operators and with the support of the European Commission. More specifically, if one is to identify which states have adopted a licencing system for online sports betting among the world's 50 largest countries (by population), one will only find²²³ Mexico, France, the UK, Italy, Spain, Poland, Belgium and with Germany to follow.

§ 3. The Growing Complexity of the Types and Formulas of Sporting Bets

The development of online bets has led to the emergence of many betting formulas (A to F). These products have sometimes been developed to meet the specific needs and cultural habits of Asian consumers, global demand drivers for bets for 10 years.

Since Asians now represent the majority of global bettors, their preferences in terms of betting consumption dictate many bookmakers' offer policy. This new offer has resulted in a shift in demand and changes in the distribution of wagers between the different forms of bets. The most popular bets date back two decades (first among which can be found the 1X2 formula, *i.e.* betting on the winner of a match or a draw) have witnessed the emergence of new betting forms, such as handicap bets. It is important to present these formulas, but also to understand how they interact and aggregate to form the liquidity of a particular event: by analogy with financial markets (where liquidity means the property of an asset that can be sold without incurring any loss), liquidity is defined here as the possibility to place bets without changing the bookmakers' odds (the more the odds are affected, the less liquid the event becomes and conversely, the more money to be invested for a given movement of the odds is needed, the more liquid the event is).

A. The Different Betting Formulas: From the 1X2 to Handicap Bets

The most popular betting formulas concern *the final result* of a given sporting event. The corresponding betting markets are the most liquid, but also the most scrutinised.

A shift from 1X2-type²²⁴ betting formulas towards handicap formulas, which are very popular in the two largest national markets for sports bets (U.S. and China) may be observed. A handicap is assigned to one of two teams or one of the two athletes.²²⁵ For a football game, if the favourite team is assigned to goals as a handicap, the match result to take into account (for betting) is the modified actual result by removing two goals from the goals actually scored by the favourite team.

The handicap attributed to the favourite team allows, in theory, to balance the total of bets on each team and only offer two choices to bettors. The odds for this type of bets are generally under 2.

²²³ On this issue, see Part 1, Title 1, Chapter 2, Section 2, § 1.

²²⁴ Win (Team 1) Draw-Win (Team 2).

²²⁵ Can be characterised by a number of goals (football), games (tennis), shots (basketball), *etc.*

Take the example of an NBA game between the Miami Heat and the Portland Trail Blazers. The odds makers believe that Miami is the favourite, and a handicap (also called point spread) of +5 points will be assigned, so that Miami should win by a minimum margin of 5 points for the bet to be considered a winner. For Asian Handicap bets, if the gap is exactly 5 points, the bet is considered a "push" and the wager is returned to the bettors. This type of betting has become even more popular than "traditional" handicap, also called European handicap, because it reduces the number of possible outcomes in a match. With the European Handicap, there are three possible outcomes for an event (1, X and 2). With the Asian Handicap, the possibility of a tie no longer exists.

Compared to the conventional 1X2, this type of betting enables the severance of the sporting results from the outcome of the bet. It is quite possible that the favourite team, winning by a margin inferior to the handicap, combines a sporting victory with a losing sporting bet (because of the handicap assigned).

A rigging dissociating the sporting result from the betting result is known as point shaving: it represents a significant risk to the integrity of sport. Participants are more likely to engage in this type of manipulation, which has a smaller impact (and even in some cases no impact whatsoever) on the event's result. Indeed, it is possible for a team, to voluntarily win the game with a lower margin than the handicap in order, at the same time, to preserve its sporting position and encourage bettors who bet against its victory.

This represents a significant area of vulnerability that has not failed to be exploited in some sports, notably in the NCAA (National Collegiate Athletic Association) American college basketball championship.²²⁶

Leaving the sporting principles of victory and defeat, this type of manipulation can be used for achieving fraudulent profits through sports betting markets, and this form of manipulation does not involve "collusion" between the two teams, like other forms of cheating reported in the literature.

Point shaving presents numerous advantages for criminal organisations:

- The costs linked to the corruption of participants are reduced, since "ethical, sporting and moral considerations" are easier to cope with;
- fraudulent bets can be placed on popular betting formulas, where higher thresholds of wagers are allowed and where the markets are very liquid, and in which the detection of irregularities is very difficult, as we have seen above;

²²⁶ R. BORGHESI, "Widespread Corruption in Sports Gambling: Fact or Fiction?", *Southern Economic Journal*, vol. 74, No. 4, April 2008, pp. 1063-1069, B.R. HUMPHREYS, J.E. RUSESKI, "Problems With Data on the Sport Industry", *Journal of Sports Economics*, pp. 11-60, 3 December 2009, DOI: 10.1177/1527002509354893.

- From a sporting point of view, suspicion is relatively low since the favourite beats the underdog. Accordingly, the sensitivity of odds on the betting markets remains weak, since potential deviations will often not be enough to trigger any alert.

As we have seen, the liquidity of the betting market is a determining factor when choosing the betting formulas used by criminal organisations. With the evolution towards handicap bets, and in particular Asian handicap, new risk areas have emerged. The evolution of the consumption behaviour of the average recreational bettor constitutes a major factor in explaining the growth of risk areas of match-fixing motivated by prospects of gains realised through sporting bets (all sports included).

B. Derivative Bets and Bets on in-Game Facts

One of the direct consequences of the globalisation of the sports betting market was the diversification of the offer of betting formulas. It is now possible to bet on a very large number of events,²²⁷ and for each of them to have the choice between a multitude of different betting formulas,²²⁸ which can reach consumers with varied preferences and very different levels of appetite for risk.

Among the new products offered, some are (more or less) separable from the final outcome of the match. In addition to the formulas derived directly from the main formulas, a multiplication of formulas on specific game facts can be noticed (for example the number of points scored in a basketball game, the number of breaks made in a tennis match or the number yellow cards handed out during a football match). These new types of bets can reach consumers with more or less appetite for risk, with odds regularly exceeding 30.

Example: English betting operators offering a bet on the event "exact score of 3-3 at the end of 90 min" (odds: 80), "player scores own goal at the end of 90 min" (odds: 34) or on the event "player scores a headed goal after 90 minutes" (odds: 17).

Often corresponding to high odds, liquidity associated with these betting formulas remains quite limited, and this reduces the possibility for the criminal to place large bets without attracting suspicion, and therefore reduces their attractiveness (and the level of risk associated with betting formula concerned). However, it is necessary to clarify that although the profits that can be made in a market with high odds are not sufficient to justify the choice of the criminal plan, some of these formulas allow to achieve, at the same time, profits in much more liquid markets (the criminal operation is already "profitable").

²²⁷ More than 170 were identified by the popular referencing site oddschecker.com.

²²⁸ D. FORREST, I. MCHALE, K. MCAULEY, "Risks to the Integrity of Sport from Betting Corruption", *Report for the Central Council for Physical Recreation by the Center for the Study of Gambling*, University of Salford, February 2008.

Example:²²⁹ imagine that the criminal has inside information and knows that Team B (the underdog) will lose by a minimum margin of 3 goals against Team A (favourite). It will be possible to use this privileged information and bet on the following betting formulas:

- Team A win with 2.5 goal handicap (very liquid market), odds: 1.86.
- Team A win (very liquid market) odds: 1.33.
- More than 3.5 goals scored during the match (very liquid market), odds: 2.1.
- More than 2.5 goals scored during the match (very liquid market), odds: 2.2.
- More than 1.5 goals scored during the match (liquid market), odds: 3.5.
- Team A win by a 3 goal margin (low liquidity), odds: 18.5.

With the same manipulation, it is possible to distribute the fraudulent wagers among all these betting formulas. The more liquid the concerned market is, the higher the threshold of possible bets will be (without triggering an alert). To avoid detection, it is "sufficient" to proportion the size of the bets in relation to the popularity of the betting formula, and therefore the market concerned or distribute wagers among a sufficiently large number of different operators.

Betting formulas, weakly correlated to the final outcome of the match (bets on in-game facts), introduce significant potential risks related to the integrity of sports, since the financial, ethical and sporting sacrifices for sports-cheaters will be less important for a manipulation of this type. However, the low liquidity levels observed in these markets lead us to relativize the actual level of threat of these categories of betting formulas. The risk of individual fraud here is higher than the risk of organised crime, especially since a single individual can easily handle a fact of the game (spot-fixing), without his team being aware, and without jeopardising the outcome of the game. The demand of criminal organisations for this type of rigging can therefore be considered relatively low, since it is more complex to operate without being detected (due to the low liquidity levels).

However, if the global market for sports bets continues to evolve according to the trend observed in recent years, these markets will increase in liquidity and the threshold at which they become attractive to criminals can quickly be reached, if it has not already been reached.

C. Live Betting

Live betting is a type of bet that currently represents more than 70% of the bets placed on the Internet,²³⁰ allowing a player to take a position, during the game, on the developments of the sporting event. If the *ex ante* odds change only marginally before the start of the match, the fluctuations during the game are permanent, reflecting the evolution of the sports event.

²²⁹ Odds, betting formulas and liquidity levels: Betfair (Premier League match between two of the top 5 teams).

²³⁰ Data provided by CK Consulting.

Example: for a classic 1X2-type formula on a football game, the odds offered for a draw (X) will gradually decrease (all other things being equal) as the game moves forward if no goal is scored (the probability associated with the event increases).

Live betting is directly linked to the development of online bets, because this type of bet is complex to implement at the operational level in the physical outlets networks. It should nevertheless be noted that some physical operators offer live bets via dedicated computers (this is particularly the case for all traditional sports books²³¹ in Las Vegas or some outlets of the Danish lottery - *Danske Spil*).

This type of bet reveals new categories of players and risks:

- The development of live betting brings along new categories of players: on traditional *ex ante* markets, winning players were "value-players" who are able (to some extent) to understand actual probabilities of occurrence in sporting events (mainly by analysing historical data and with a careful monitoring of the sports news), and thus, to some extent, to beat the bookmakers; with the advent of live betting, the market advantage is obtained by the technology, through the speed of execution of orders,²³² the time difference between a sporting event and its television broadcasting,²³³ the use of algorithms and computer bots (automated computerised games); obviously, bookmakers impose delays in the processing of bets in order to control the risk of falling victim to stakeholders that are faster than them, and become the target of arbitrageurs,²³⁴
- *The development of live bets brings new risks; its real-time monitoring requires significant resources, which can be prohibitive for some bookmakers; despite this risk, given the growing demand for this type of product, bookmakers have no choice but to follow suit, and develop monitoring systems adapted to the risks inherent to this environment.*

Live betting allows one to generate greater profits by optimising the timing of wagers while using the same inside information. It is possible to benefit from the highest levels of odds in order to place fraudulent bets. Thus, towards the end of a football game, if neither team took the lead, the odds associated with the victory of one of the two will automatically increase.

These frauds require a perfect coordination between the authors of the manipulation and the placing of bets on betting markets. Requiring additional logistical needs,²³⁵ and all things being equal, these frauds have a lower success rate (complete), but as they present a potential for very large gains, one can

²³¹ Physical betting operators, present in each casino in Las Vegas, NV (USA).

²³² On the general issue of high-frequency trading, see B.BIAS, P. WOOLEY, "High Frequency Trading", TSE Working Paper, 2011, available at: [idei/doc/conf/pwri/biais_pwri_0311.pdf].

²³³ By increasing delay: live spectator, radio stream, TV stream, Internet stream.

²³⁴ See *infra* § 4, B, 1: "The Efficiency of the Sports Betting Markets".

²³⁵ Coordination between manipulation and betting, communicating information, etc.

imagine that fraudsters specialise and learn to master them. Elaborate schemes for manipulating betting markets are made possible by live betting, including the communication by a (corrupt) athlete of signals to the market. It is advisable to change the odds in a favourable direction (the odds change according to trends that can be anticipated), to capitalise on the event that the cheater knows to be certain, when the odds are at their highest level.²³⁶

Manipulating Bets in Order to Obtain a Certain Gain: A Case of Arbitrage Opportunities according to Forrest (2008)

In this example, the odds of a match between Andy Murray and Dmitry Tursunov held in St. Petersburg in October 2007 will be used. At the beginning of the game one can bet against (lay) Murray with 1.27 odds (this means that betting € 100 causes a loss of € 27 if Murray wins and a gain of € 100 if he loses). At the end of the first set (which he lost), one can bet on a win for Murray (back) with the odds of 2.00 (and thus win or lose an equal amount whether he wins or loses).

By betting € 100 at the beginning of the match against Murray (lay) and € 63.50 for him after the first set (back), one would win:

- In the case of Murray's defeat: + 100 (winnings from the lay) – 63.50 (lost back bet) = € 36.50
- In the event of a victory for Murray: - 27 (losses from the lay) + 63.5 (back winnings) = € 36.50.

Regardless of the outcome of the game, it is possible to make winnings. It is sufficient to balance the wagers made before the game after losing the first set to ensure a win.

It is possible to increase the fraudulent returns of fixes associated with the facts of the game (spot-fixing) via live bets: Forrest (2008) gives many examples of this.

Take the case of a favourite in a tennis match, who accepts to lose the first set for a certain sum of money: this event does not allow, in itself, to achieve high gains because the stakes linked to the outcome of a set are limited. In contrast, the loss of the first set will increase the odds for the favourite player at the end of the first set, so it will be much more profitable to bet on a victory that seems very likely at this time. Forrest (2008) even shows that it is sometimes possible to achieve a definite gain which is referred to in finance as arbitrage opportunities (see box above). Accordingly, certain types of manipulation, with rates of return (ROR) which are too small to be selected by criminals cross "breakeven" minimum thanks to live bets. Risks appear for betting formulas that were previously relatively protected by attempts of match-fixing motivated by prospects of gains realised via sporting bets.

²³⁶ The Davydenko-Arguello case (2007), see D. FORREST, I MCHALE, K. MCAULEY, "Risks to the Integrity of Sport from Betting Corruption", *Report for the Central Council for Physical Recreation by the Center for the Study of Gambling*, University of Salford, February 2008, Appendix C.

It should be added that live bets allow to place relatively large amounts, gradually, with a lower risk of detection than for bets made before the match. The use of bots, high-frequency trading software²³⁷ will allow criminals to sequence the placement of bets on the same given formula, also offered by hundreds of different betting operators.

D. Betting Exchanges

Betting exchanges represent an alternative model to traditional bookmakers. The operator acts as an intermediary between the players, who have the opportunity to bet on the occurrence (back) or the non-occurrence (lay) of a given event. The operator's revenues are generated by fees levied on the winnings of players, and the counterparty risk traditionally borne by the operator disappears.

On betfair, the betting exchange that represent 80% of the global market, a large number of participants buy and sell the same standardised product. The competition is organised around the prices offered by these stakeholders. These participants, the players, have different objectives and different assessments of the probabilities of future events. Everyone is free to focus on their opinion.

The exchange system is built around order books, one for each market (associated with a specific event). The order book stores all the orders of the market participants and can display the most significant orders to inform participants of the prices and quantities being processed. The compatible (back-lay) couples are matched to enable transactions such as those present on the London Stock Exchange (LSE) interface, which matches (bid-ask) couples.

The order book is a compendium of market orders, a photograph at a given moment of supply and demand on a title, all purchase and sale orders are listed on it. The liquidity of a given market depends on this order book, which centralises all orders.

LSE – London Stock Exchange

Volume (B)	Bid	Ask	Volume (A)
270	59.140	59.150	408
2000	59.130	59.160	100
135	59.120	59.150	135
3100	59.110	59.160	600

Reading book orders for assets should be done as follows: there is a demand of 270 units for a price of 59.140, but there are no offers at this price; the nearest offer is at 59.150 for a quantity of 408 units. An order to buy 408 units at 59,150, placed immediately, will be executed immediately and, symmetrically, an order to sell 270 units at 59.140 placed immediately will be executed immediately.

²³⁷ See *infra* § 4, B, 1: "The Efficiency of the Sports Betting Market".

Betfair

Back				Lay			
1,93	1,94	1,95	1,96	1,98	1,99	2	2,1
\$4005	\$1005	\$1222	\$1827	\$1966	\$107	\$19	\$455

Here, the order book is considered for a given event: one can bet on (back) or against (lay) the occurrence of the event. If you want to bet on the occurrence of the event you make a back order that will be executed immediately at 1.98 odds up to an amount of \$ 1.966, then you will earn $1,966 \times 1.98 = \$ 3,892.68$ if the event occurs, if not \$ 1,966 will be taken at your detriment. If you want to bet against the event, you can take \$ 1.827 at 1.96 odds, in which case you will owe \$ 3,580.92 if the event occurs.

Thus, even if it is the best demand, the order will only be executed when there is an equivalent to the price and quantity asked for; the existence of consideration is essential, which is not always guaranteed unlike that which can be observed in the traditional model, where bookmakers agree to accept all betting requests at the price displayed. The more orders "determined", by matching supply and demand, the more the market will be liquid.

These new platforms give rise to new classes of players, arbitrageurs and algorithmic traders, forcing traditional operators to adjust their business models. These "high frequency" trading techniques (HFT) allow players to take advantage of the fragmentation of the markets, away from the odds offered and their evolution on many betting platforms. As is the case for financial markets, HFT serves a useful economic function by providing liquidity to sports betting markets and forcing bookmakers to offer a price close to the market value or risk being victims of arbitrages. HFT contributes directly to reducing the spread, that is to say, the bid-ask or back-lay gap), and thus transaction costs, which directly benefits the players and consumers.

Some of the criticisms addressed to Betfair by traditional operators at its launch in 2000 should be noted.

First, the possibility of betting on the non-occurrence of an event, which raises obvious questions about the integrity of sporting events, and creates new TMPF opportunities (essentially individual fraud).²³⁸

For example, for a horse race, a trainer can easily change the horse's diet and training programme so he is certain of its underperformance in an upcoming race. Before the arrival of Betfair and betting exchanges, it was necessary to bet on all the other horses in order to successfully exploit this information, which, given the level of the rates of return, could be profitable for the criminal (in general, the sum of wagers was less than the winnings). With Betfair, you can directly bet (lay) on the event "such horse loses" which becomes usable by fraudsters.

²³⁸ Note that the "double" luck formula was developed in parallel by conventional bookmakers, which for a 1X2-type formula is the same as the possibility of a "lay" on Betfair. Markets for this type of formulas are now quite liquid.

Second, *the offered rate of return to players (average) are particularly attractive (equal to or \leq 95% overall), which raises the question of the risk of money laundering through this platform.* Betfair clearly responds to these allegations of vulnerability through its advanced KYC (know your customer) policy, accompanied by a displayed transparency towards supervisors. It is theoretically possible to retrieve information about each transaction and the trading volumes which are displayed in real time (depth of market, that is to say the amounts bet). This option is available for each of the 50 betting formulas offered (by sporting event, and in average). Finally, the operator is among the world leaders in terms of internal monitoring and information sharing with the British gaming regulators, the Gambling Commission.

Finally, *betting exchanges have attracted new customers, who are experts in arbitrage and return optimisation (an in particular money launderers). These new players have thus contributed greatly to shift the sports betting market from a recreational era to a more professional era. Moreover, by the mechanisms of hedging and arbitrage that they authorise, betting exchanges have undoubtedly helped establish interactions between Asian and European markets, previously well apart.*

Although the emergence of betting exchanges has indeed revolutionised the sports betting market, it does not appear to have directly led to an increased risk of TMPF. However, the consequences it induced on the sports betting market (capturing new clients that are fond of high-yield products and arbitrage) have undoubtedly greatly amplified these risks.

E. Spread betting

It is a form of bets that offer bettors the possibility to position themselves in relation to a spread (range) defined by a particular bookmaker. Bettors have two decisions to make:

- Their position (above or below) relative to the reference number, the spread announced by the bookmaker;
- The monetary value assigned to one point of deviation from the reference number.

Example: take the example of cumulative points scored in a basketball game, with a figure of reference established by the bookmaker at 180-190 points. The bettor chooses to take a position above (long) this figure, and assign £ 100 per point of deflection. If the cumulative total of points is 210 points, the bettor collects $(210-190) \times \text{£ } 100 = \text{£ } 2000$. The bettor's potential gains or losses therefore depend on the "accuracy" of his prediction. Gains and potential losses are significant, and bettors are required to provision funds (used as collateral in case of loss) at the time of taking their position (bet).

Like handicap bets examined earlier, spread betting creates an active market for both sides of a binary bet: it is likely that the associated risk management is easier because it is simpler to balance bets on the two sections of the alternative. However, additional research seems necessary to achieve certainty in this area. Bookmakers offering spread betting are almost exclusively found on the London market; they are not supervised by the Gambling Commission but by the Financial Conduct Authority (FCA);²³⁹ indeed, their technical and market structure make them similar to organised financial markets.

There are many fixed odds betting formulas (of the "over / under" type) allowing bettors to position themselves on the margins of the victory of one team over another, or on the accumulation of points scored in a game. A formula close to the actual handicap presents low odds (typically odds around 2), whereas formulas that are farther away from the handicap present higher odds (odds of up to 16), thus meeting the diverse preferences of bettors, and their degree of appetite for risk. Typically, 4 to 8 "over / under" betting formulas will be offered to bettors for a given football match,²⁴⁰ corresponding to a single market for spread betting.

Gains or losses are therefore not limited to the money committed, as is the case for a conventional fixed odds bet. Theoretically this is a form of bets which can extract very significant profits from privileged information (with an effective strategy), by taking a position, for example, on the defeat of a team that loses by a much larger margin than anticipated by the markets.

Today, liquidity associated with this form of bets is relatively low: the Sporting Index Group,²⁴¹ which owns more than 80% of the market share, says that it processes 4 million orders per year (against 7 million orders per day for Betfair) for a gross income of £ 23 M€. In addition, all flows transiting through the platforms must be reported to the FCA, which operates a close supervision of the few players present on this market. *Given the current situation of spread betting companies, the risks for sports integrity appear to be relatively low at the moment (from what is visible at least). Only the United States seems to have been confronted with cases of match-fixing in this field. It remains true that this form of bets has many important theoretical risks.*

F. One Event, Many Formulas, One Liquidity

Before trying to estimate the risks for each betting formula, it should first be kept in mind that the stakes of a meeting often develop according to several betting formulas. The main indicator of the importance of an event is the liquidity associated with the set of formulas linked to a given event.

²³⁹ Equivalent to the French Autorité des Marchés Financiers (AMF).

²⁴⁰ Over / under: 1.5 goals; 2.5 goals ... 8.5. Decimals used to remove the possibility of guessing right, since the concept of goal fraction does not exist in football.

²⁴¹ [<http://www.sportingindex.com>].

The liquidity of sports betting markets is largely determined by the behaviours of recreational bettors; they meet roughly the same criteria as consumers of sporting events (live or televised). These bettors place their bets mainly on favourites because the probability of winning is higher. Moreover, even if there are many exceptions to this rule (especially because the analysis of ratings also guides the bettors' behaviour), the more popular a sporting event is, the more viewers will watch the event, and the higher the accumulated amounts wagered will be (liquidity). Before the advent of the Internet, the demand for sporting bets was generally derived from the demand of fans²⁴² and the consumption behaviour of the mass of recreational spectators and bettors determined in practice the level of liquidity of the betting market for a given sporting event (all betting formulas included). There is good reason to believe that the development of the supply of online bets has increased the number of opportunistic bettors (see box above for the characterisation of the distinction between recreational bettor / opportunistic bettor).

It is nevertheless important to distinguish between the popularity of the sporting event and the popularity of the betting formula. For a given football match, more than 170 different betting formulas can be offered by bookmakers. These will be more or less demanded by consumers, and this will determine the level of liquidity associated with each market (sporting event - betting formula noted es-fp). Typically, on a global scale, an English Premier League football match traditionally generates more interest (and therefore more bets) than a French Ligue 1 football match, and a betting formula associated with the outcome of a sporting event will be more popular than a formula associated with a minor fact of the game.

The cumulative liquidity of the different betting formulas for a given event confirming the interest of bettors for a given sporting event, we are interested here more specifically in the relative liquidity of each [sporting event-betting formula] pair, which will make it possible to refine the assessment of the risks associated with the different products offered by bookmakers. Thus, for a given sporting event, there will be more or less [es-fp] couples with a sufficiently large liquidity that can be exploited by criminal organisations.

Note that the consumption preferences of Asian bettors have led to changes in liquidity levels in certain betting formulas, thus putting some [event-sports betting formula] couples above the (theoretical) floor for criminal exploitation. More liquid markets lead to an increase of sporting events likely to be subject to TMPF. *Thus the combined effects of the globalisation of sports markets (and their international dissemination, including via the Internet) and betting markets contributed to an increase in TMPF opportunities for criminal organisations.*

²⁴² J. RODNEY, P. WEINBACH, "Investigating Allegations of Points having in NCAA Basketball Using Actual Sportsbook Betting Percentages", *Journal of Sports Economics*, 28 October 2010, DOI: 10.1177/1527002510385904.

Therefore, the variety of betting formulas does not exclude the existence of cross-cutting relationships between different versions of the same event, as can be observed, for example, in the relationships between the different bonds emitted by the same company. This leads us to consider bets as financial products.

§ 4. The Financiarisation of Sporting Bets

Like financial products, bets are contracts between the parties "whose effects on benefits and losses, either for all parties, or for one or more parties depend on an uncertain event"^(A).²⁴³ This similarity leads to epistemological consequences, but also practical consequences in terms of efficiency, risk hedging and fraud detection **(B)**.

A. An Aleatory Contract

In the case of betting, this means that one of the parties bets on the occurrence of an event and the other party bets on the complementary event. In the case of financial products, it does not always seem appropriate to evoke "uncertain elements" outside insurance contracts: for example, one has the feeling that debt must be honoured ... But in fact, it is possible that borrowers default: the payment of the coupons and the principal of an obligation are therefore uncertain events to that extent. Similarly, dividends paid to shareholders depend on the company's level of profits, which itself depends on external circumstances such as the intensity of the demand and competition, economic conditions, the cost of raw materials and labour, etc.. If lawyers will argue that financial products are not all random contracts according to the Civil Code, this assimilation does not affect the creators of the concept (for example, Soto (1559)²⁴⁴), finance theorists or contemporary regulators. For example, Bachelor (1938)²⁴⁵ writes, p. 1:

"In the theory of speculation we consider the variation of a given value (...) It is assumed that changes in this course are due to chance (...) By saying that price changes are caused by chance, it is meant that, as a result of the excessive complexity of the causes that produce these variations, everything happens in reality, as if chance were acting alone."

²⁴³ Article 1964 of the French Civil Code.

²⁴⁴ D. DE SOTO, *Libri decem de Justitia et jure*, Lugduni apud haeredes J. Junctae, 1559.

²⁴⁵ L. BACHELIER, *La spéculation et le calcul des probabilités*, Paris, Gauthiers-Villars, 1938.

The Concept of Efficiency as Used by Financial Economists

Eugene Fama won the Nobel Prize for Economics in 2013 for his work on efficiency. It would be better to use the term *informational efficiency* (as noted Christian Walter (1996), the common use constitutes a barbarism) since economists have several concepts of efficiency.

This informational efficiency designates the coincidence of the price with the fundamental value of a financial asset. In the context of bets, it can be said that *the market efficiently allocates information when odds reflect the probability of events*. Fama's definition is more general: a market is efficient if prices incorporate, at any time, all the information available. Although the idea sounds simple, the test is more complex since "all the information" is not easily integrated into a comprehensive database. It is therefore necessary to develop partial or indirect tests.

For example, Samuelson (1965) showed that a necessary albeit insufficient condition for efficiency was the existence of a random walk: since, information arrives randomly, prices should follow a random evolution, but a random walk does not imply efficiency.

Other tests are based on the impossibility to predict of asset returns from historical data – this explains "predictability" tests or studies on inside information characterising insider trading. Finally, Fama [1998] looks beyond the anomalies that are sometimes observed, to real opportunities to implement, on this basis, strategies systematically leading to return excesses: indeed, it is impossible to beat an efficient market without taking more risks than the average portfolio.

If the hypothesis of efficiency should apply to sporting bets, then the odds are expected to fluctuate randomly and it would not be possible to beat the market and to obtain an expected profit (although one can obviously win "by chance").

(*) The higher the probability of an event, the lower the corresponding odds would be.

Subsequently, all financial theorists represented financial assets as random variables, the same formalities as for gambling and sporting bets. This position is not purely theoretical: the Basel committee, which suggests principles for banking supervision to members of the G20, explicitly uses this probabilistic representation.²⁴⁶ The text of the “Basel accord” is then transposed into the banking legislation of the signatory countries.²⁴⁷

The law transformed the random representation of financial products into a social fact. Bets, like financial assets, are not random by nature, but pursuant to an agreement. Indeed, if one of the parties could know the outcome of the event that is unknown to the other, the randomness factor would not apply to the party possessing the information. In finance, the term insider trading is used; the corresponding problem in the betting world is fixing or privileged information (unknown to the general public, such as the injury of a tennis player before the start of the match): in both cases, the party having the information takes advantage of the other party’s innocence to offer him a fool’s contract since the outcome is certain for the party disposing of the privileged information. Therefore, aleatory contracts suppose an informational symmetry between contractors which can be qualified as a subjective hazard (because it is not crucial that the outcome of the contract be ignored by everyone, it is sufficient that the parties are ignorant about the outcome). From this evidently derive practical consequences.

B. Practical Consequences

1. The Effectiveness of Sports Betting Markets

Are betting markets efficient? An abundant recent literature attempts to answer this question. It is appropriate to first ask what is meant by market efficiency.²⁴⁸ The box below highlights two of the informational efficiency’s characteristics: on the one hand, it is not possible to beat the market (that is to say, getting a superior performance from an asset portfolio compared to the market as a whole) without taking extra risks, on the other hand, the odds correctly assess probabilities.

On the first point, the possibility to beat the market, it is known that arbitrageurs make gains in the financial markets through their automated trading tools at the forefront of financial modelling, software optimisation (fast algorithms) and hardware optimisation (computing power and speed of access to market). But in general, these arbitrage opportunities last only a few tenths of a second. Thus, arbitrageurs increase the efficiency of the market by leveraging anomalies. Indeed, in a sufficiently large market where information spreads instantly, as is the case for the stock market, operators react properly and almost immediately to the information if they have the cognitive ability to interpret it accurately.

²⁴⁶ Basel Committee on Banking Supervision, *International Convergence of Capital Measurement and Capital Standards – A Revised Framework – Comprehensive Version*, No. 71, 2006. At pp. 64-65, “The regulatory capital of banks are explicitly scaled to a quantile of the normal distribution”.

²⁴⁷ Basel Committee on Banking Supervision, *International Convergence of Capital Measurement and Capital Standards – A Revised Framework – Comprehensive Version*, No. 71, 2006, pp. 64-65.

²⁴⁸ C. WALTER, “Une histoire du concept d’efficience sur les marchés financiers”, *History Annals, Social Sciences*, July-August 1996, No. 4, 1996, pp. 873-905.

Presumably it is the same for betting markets: there are sure bets, but it takes special circumstances that are explained below in three stages about fixed odds bets with the example of a 1X2 bet.²⁴⁹

In their recent report, on money laundering and sporting bets, C. Kalb and P. Verschuuren²⁵⁰ take as an example the football game that pitted AC Milan against FC Barcelona in the Champions League on 28 March 2012. For 1X2 formulas, it was possible to find the following odds:

- 5.25 for a victory of AC Milan,
- 4 for a draw,
- 1.73 for a victory of FC Barcelona.

By betting € 100 wisely,²⁵¹ it was certain to recover € 98.18 regardless of the outcome of the game. It would have been sufficient for the rating of the last possibility to be slightly higher (e.g. 1.79) in order to be certain to recover more than the initial investment.²⁵² The gain of such an arbitrage opportunity (to use financial terms) or sure bet (according to bookmaker jargon) is potentially infinite.

Bookmakers verify the consistency of their odds, which corresponds to the consistency of their beliefs, since the odds are the inverse value of probabilities (and probabilities are beliefs). Since probabilities are additive (*i.e.* their sum equals one), the sum of the (inverse of) odds is subject to a specific law: if the sum of the inverse of the odds is less than one, the bookmaker loses money (if bettors are rational) but if the sum of the inverse of the odds is greater than one,²⁵³ the bookmaker will make money at the expense of bettors (whose beliefs are inconsistent, this is referring to the dutch book).²⁵⁴

This is why the bookmakers, like traders and the financial institutions that employ them, have consistent beliefs (that is to say, they assign probabilities to future events, see de Finetti (1937)²⁵⁵). More generally, one can think that bookmakers, or more generally opportunistic bettors have consistent beliefs and on average win money through betting, whereas recreational bettors lose because of

²⁴⁹ The demonstration of the properties below in general was made by De Finetti B. [1937].

²⁵⁰ C. KALB, P. VERSCHUUREN, *Blanchiment d'argent, un nouveau fléau pour les paris sportifs ?*, *op. cit.*

²⁵¹ Distributed as follows: $\frac{100}{1 + \frac{5,25}{4} + \frac{5,25}{1,73}} = 18,7\text{€}$ on the first possibility, $\frac{100}{\frac{4}{5,25+1} + \frac{4}{1,73}} = 24,55\text{€}$ on the second possibility, and $\frac{100}{\frac{5,25}{1,73} + \frac{4}{1,73} + 1} = 56,75\text{€}$ on the third.

²⁵² By betting € 19.06, € 25.02 and € 55.91, € 100.08 was collected regardless of the outcome of the game.

²⁵³ The difference between the sum of implied probabilities (inverse of odds) and the cap of the actual probabilities (100%) give us the commission of the betting operator. For a classic 1X2 formula (Team 1 wins, draw, Team 2 wins), by adding up the probabilities (from odds) 1,75 (57,14%), 3,50 (28,57%), 3,90 (25,64%) = 111,35%, we get the commission of the betting operator (*vig*) of 11.35% (an RRB equivalent to 89.65%).

²⁵⁴ Combination of odds for a given event to guarantee a positive profit (regardless of the outcome of the sporting event).

²⁵⁵ B. DE FINETTI, "La prévision, ses lois logiques, ses sources subjectives", *Annales de l'Institut Poincaré*, 1937, pp. 1-69.

their cognitive bias²⁵⁶ (the sociology of the phenomenon will be explained with more precision²⁵⁷).

If it is not possible to find people whose beliefs offer arbitrage opportunities, it may be possible to win by betting against different persons or bookmakers: if all bookmakers simultaneously display their ratings and offer to bet and take bets, automated software can easily constantly search for arbitrage opportunities and leverage them.

In the example given by Ch. Kalb and P. Verschuuren (2013), the three odds correspond to three different bookmakers. If bookmaker X offers odds of 5.25 for AC Milan, bookmaker Y offers odds of 4 for a draw and bookmaker Z offers odds of 1.79 for FC Barcelona, it is sufficient to bet with each bookmaker the amount required to achieve an assured gain.²⁵⁸ Such a possibility means that the market is not efficient in allocating information since it is possible to make a sure bet.

On a financial market, automated software captures all arbitrage opportunities: prices are then adjusted to eliminate any chance of winning.²⁵⁹ Similarly, in a betting market, arbitrageurs must bring odds towards the reverse of the probabilities of the corresponding events. Levitt (2004)²⁶⁰ showed that odds did not behave like prices on an efficient market since they are designed to take advantage of the bettors' cognitive biases, whose beliefs are incoherent in the sense of the preceding paragraph. However, it seems that the bias observed by Levitt has decreased significantly as a result of competition between operators: we can therefore assume that the markets are more efficient than they were ten years ago. This is at least the result of recent research,²⁶¹ some of which still need to be confirmed.²⁶²

²⁵⁶ See in particular D. MCDONALD, M.C. SUNG, J. JOHNSON, "Evidence of Biased Decision-Making in Betting Markets", in: *The Oxford Handbook of the Economics of Gambling*, Oxford Univ. Press, 2014, pp. 487-517.

²⁵⁷ See *infra* Part 2, Title 2, Chapter 2, Section 1, § 2.

²⁵⁸ Therefore, the bets should be: $\frac{1}{5,25} = 19\text{€}06$ on Milan, $\frac{1}{4} = 25\text{€}02$ on a nil

draw, and $\frac{1}{1,79} = 55\text{€}91$ on Barcelona. In case Milan won, the gain would amount to $\frac{1}{5,25} + \frac{1}{4} + \frac{1}{1,79}$

$19,06 \times 5,25 = 100\text{€}065$ against $25,02 \times 4 = 100\text{€}08$ in the event of a nil score $55,91 \times 1,79 = 100,0789$ if Barcelona emerged victorious. In any case, the gain is superior to the bet (here 100). This means that one could gain any amount by multiplying the bet by the odds.

²⁵⁹ The opportunities of arbitration are exploited until they disappear. A market allowing such a mechanism is called efficient. Ticket machine are configured as to react immediately to the information received, and function in order to benefit from temporary inefficiencies: the increase in the volumes generated will adjust the prices to their real value (in such way that all available information is included in the price).

²⁶⁰ S.D. LEVITT, "Why are Gambling Markets Organised so Differently from Financial Markets?", *Economics Journal, Royal Economic Society*, vol. 114, April 2004, pp. 223-246.

²⁶¹ See for example J. GODDARD, "The Efficiency of Soccer Betting Markets", in: *The Oxford Handbook of the Economics of Gambling*, Oxford, Univ. Press, 2014, pp. 163-171, which concludes that arbitrage opportunities were for the most part eliminated by the "growing sophistication of the sports betting markets, which profited from the advances made in computing".

An efficient market resembles a person with consistent beliefs since it is not possible to offer them a Dutch book. The only way of making money at the expense of an efficient market is to manipulate its participants as we have seen previously: the collective illusion seems unlikely, but it is still possible to beat other players by being faster or better informed. Faster? Since 2010, a controversy has developed over high-frequency trading and it gives substance to this opinion. In fact, high-frequency trading operators are accused of placing orders and withdrawing them before a transaction takes place, and, in this way, manipulating those whose market access is slower. These allegations concerning financial markets are not applicable to sporting bets, because order book markets (like Betfair) chose a time step that puts all bettors on an equal footing.

This leaves the possibility of being better informed: the equivalent of insider trading in financial markets is simply called a fix. And indeed, the financial analogy allows us to apply proven techniques elsewhere.

2. The Detection of Fraud

There is an old practice of insider trading and, although the world of finance is not a paragon of virtue, it remains a model of sophistication. On the one hand, the legal question of insider trading is more advanced than the notion of sporting fraud. On the other hand, the financial markets have established, long ago, sophisticated methods of detection: for example, since 1997, the NASDAQ monitored two million daily transactions through a system that reported 10,000 transactions requiring attention daily.²⁶³

The pattern of insider trading is as follows: an agent acquires, before the market, positive information about a company (e.g. a major technological innovation). He buys shares in this company and sells them when the information becomes public. Obviously, the law prohibits managers from taking advantage of privileged information that is available to them, and their transactions are closely monitored. However, they could inform a third party in order to obtain an unlawful gain by proxy: therefore, a general method is needed in order to detect insider trading. This method consists in looking for abnormal transaction volumes (that is to say, significantly higher than the average) that could have been made in the vicinity of a significant gap in value. This method requires having not only the stock prices, but also the trading volumes. In our example, transactions on shares are not sufficient since there are also derivatives markets (such as the options markets) that should also be monitored.

²⁶² For example, C. BARRAUD, *L'efficience informationnelle du marché des paris sportifs: un parallèle avec les marchés boursiers*, th. Univ. Dauphine, 2012, shows that certain typical phenomena of efficient markets (the spread increases towards the start of matches whose outcome is very uncertain) take place on the betting markets: this is not sufficient to justify the fact that these markets are efficient. In the same manner, J.J. READE, J. GODDARD, "Information Efficiency in High-Frequency Betting Markets", in: *The Oxford Handbook of the Economics of Gambling*, Oxford Univ. Press, 2014, pp. 210-234, discussing the form of efficiency that seems to be apparent on betting markets, although not all their results converge with previous research.

²⁶³ J.D. KIRKLAND, "The NASD Regulation Advanced-Detection System ADS", *AI Magazine* 20-1n 1999, pp. 55-56.

This brief presentation of financial data mining methods suggests that statistical monitoring against sporting fraud does not presently have sufficient information to refer enough transactions to the attention of authorities or operators. Indeed, it is usually considered that over 95% of bets are not reported.²⁶⁴ Even if such information was available, one would obviously need to monitor all the betting formulas for each event, because as we have seen, fraudsters had an interest in diversifying their bets on all appropriate media, both to avoid detection and to profit from the odds offered to uninformed bettors.

Current detection systems for fraudulent bets ("Radars") use models that project the changing odds as a given sporting event evolves. Exceedingly large deviations between calculated odds and observed odds trigger alerts. They generally reflect betting volumes high enough to counteract the natural evolution of the sports odds given the developments of the sporting event. The concept of liquidity is fundamental here, because its level determines the volumes of fraudulent bets that can be placed without causing too much of a deviation from the expected evolution of prices, and the consequent triggering of an alert. However, the public information on the volume of transactions is only available for a handful of operators (Betfair). In addition, nobody knows the transaction volumes of Asian operators except the operators themselves.

Monitoring systems identifying suspicious variations of odds are useful since they trigger alerts; highlight the abnormalities that can possibly indicate match-fixing motivated by prospects of gains via fraudulent sporting bets. Without access to the distribution of betting volumes, it is difficult to go beyond an advanced state of suspicion. Abnormalities are correctly identified, but the identification of the culprits is very difficult even impossible (with this tool only). Their contribution is not negligible, but it is far from being sufficient.

In parallel, fixed-odds betting operators are developing their own internal monitoring systems, if only to optimize their counterparty risk. These operators have the advantage of integrating the information on the distribution of the volumes passing through their network. Therefore, they are best placed to judge the integrity of bets placed by customers on their own platform.

For an experienced criminal, it is important to avoid causing significant deviations by placing bets that are too large compared to the liquidity of the relevant market, which could potentially trigger an alarm in monitoring systems. On the other hand, it is sufficient to avoid operators known to have advanced detection mechanisms,²⁶⁵ and it is not very difficult to circumvent these few well-guarded areas in an opaque betting market that is weakly prepared to fight against this type of manipulation.

²⁶⁴ In this sense, see C. KALB, P. VERSCHUUREN, *Blanchiment d'argent, un nouveau fléau pour les paris sportifs?*, *op. cit.*

²⁶⁵ Such as Betfair or *La Française des Jeux*.

3. Risk Hedging

Possible analogies between betting markets and financial markets are numerous; however, it is important to pay attention to detail. For example, derivative bets (bets on facts of the game, side bets) have nothing to do with derivatives on the financial market, which present a leverage effect in relation to a conventional product known as the underlying product (share, bond) and therefore multiply the potential gains or losses. Derivative bets have a different medium (than the result of the game) and do not, themselves, include a leverage effect. In other words, the potential gains and losses linked to these bets are not amplified. By contrast, the decrease in transaction costs allowed by betting markets, like Betfair, which creates a direct relationship between sellers and buyers, leads to increased volumes for the same bet. It is possible to say that the markets of derivative bets have a multiplier effect on bets in the same way that derivatives affect financial markets. However, it is important to keep a sense of scale: Betfair claims to have received 7.5 billion pounds outstanding in 2010 with a global legal turnover of 50 billion pounds, or 15%. By comparison, the notional value²⁶⁶ of the financial derivatives markets²⁶⁷ is now more than 10 times the GDP of the planet! Transactions on the foreign exchange market, on their own, represent more than twenty times²⁶⁸ the world's GDP. It is therefore important to relativize the importance of new stakeholders in the sporting bets area. Indeed, traditional bookmakers (particularly in Asia) continue to provide the bulk of global betting activity, whether "hard" or online bets.

Furthermore, lower transaction costs and improved informational efficiency have enabled the development of hedging methods that are typical in financial markets. In 2004 again, Levitt had noticed that before the advent of the Internet, bookmakers did not set their odds to equalise the demand for complementary events, in the way that an auctioneer seek the price that equalises supply and demand: they are content with exploiting the familiarity of fans (which leads them to bet on their team).

To take the example of the AC Milan - FC Barcelona match, before the Internet, the ratings could have been:

- In Milan
 - Milan 4
 - Draw 4
 - Barcelona 1,75

²⁶⁶ Potential value representing all the commitments of parties at a given time. In the case of derivatives, the notional amount is covered by the instrument

²⁶⁷ Bank For International Settlements, "OTC Derivatives Statistics at end-June 2012", *BIS Monetary and Economic Department*, November 2012.

²⁶⁸ Bank For International Settlements, "Triennial Central Bank Survey Report on Global Foreign Exchange Market Activity in 2010", Monetary and Economic Department, December 2010.

- And in Barcelona
 - Milan 5,5
 - Draw 4
 - Barcelona 1,5

In these two examples, the theoretical rates of return are in the order of 93% and 91%, but, to the extent that local supporters would bet 90% for their team (which is realistic in Barcelona but not in Milan!),²⁶⁹ even with bad odds, the bookmaker would thus increase the probability of not losing. The development of the markets has long since reduced the practical usefulness of this fans' bias: because of competition and informational efficiency, but also because consumers of sporting bets have evolved into a more "professional" population; odds were standardised and brought closer to the actual probabilities. Bookmakers can therefore no longer take advantage of supporters' cognitive biases to ensure their financial results. How can they be certain not to lose money? Several factors are favourable to them: they anticipate the behaviour of their bettors, and the law of large numbers also plays in their favour so that the real rate of return converges toward the theoretical rate of return that they themselves determine. Finally, they can if they wish to cover unbalanced positions by playing on betting markets offering high rates of return.

In a case where bookmakers receive balanced odds between the three possible outcomes, which generally only occurs when the match is very balanced, they know they have earned more than they will have to pay. But if most bets are focused on one of the three possibilities (with odds greater than 1), which is almost always the case because bettors mainly wager on the game's favourite team or player, bookmakers risk losing money in the event that this outcome comes true.

Consider an example where the odds are overwhelmingly in favour of the favourite team, for example, the match between PSG and Valenciennes that took place on Friday 14 February 2013: the best odds on Oddschecker.com are:

- PSG 1,18;
- Draw 7;
- Valenciennes 13.

Or a rate of return of $\frac{1}{\frac{1}{1,18} + \frac{1}{7} + \frac{1}{13}} = 93.7\%$. It is therefore sufficient that more than

$\frac{1}{1,18} = 85\%$ of bets be made on a win for PSG in order for Bet365 to have to pay more than the wagers collected: such a possibility seems very likely, because it is not unusual that 90% of the bets to be made on the match's favourite. In this case, Valenciennes fans are so few that bets made on the victory of this club may not exceed 5%, and 5% for a draw, and this would yield the following results:

²⁶⁹ Given the level of odds, Barcelona is heavily favored (66.66% as Proposition 3, Barcelona victory, is realized. 18.18% for Milan, 25% for a draw). the sum exceeds 100%; the difference is the commission of the operator, as has been explained above. In other words, the preferences of bets of local supporters are biased in favor of their team, but to a certain extent. The outsider will never receive 90% of bets placed (for a sufficient sample of bettors, obviously).

- In the event of a victory for PSG, Bet365 would have to pay $1,18 \times 90\% = 106.2\%$ of the bets,
- In the event of a draw, Bet365 would have to pay $7 \times 5\% = 35\%$ of bets,
- In the event of a win for Valenciennes, Bet365 would have to pay $13 \times 5\% = 65\%$ of the bets.

The last two results suggest that the operator can hope to make a profit, but in general the operator fears a victory of the favourite team. To limit its losses, the operator seeks to limit the odds on the favourite, which may result in a loss of customers; it may also try to encourage betting for the underdog by increasing the odds for a victory of this team, but this is limited by the fact that devoted fans do not change their bets based on odds; only opportunistic players tend to do so.²⁷⁰

In practice, a bookmaker does not seek to make winning bets, but to limit losses linked to excessive concentrations. He gets paid on the volumes as well as an additional margin on the rate of return (if the rate of return is $x\%$, the margin is $100-x\%$). This means that the bookmaker needs to find the right balance between attractive odds, likely to attract bettors, and reasonable odds, which would not cause excessive financial risks for the operator.

When the bookmaker chooses to cover its risks (this is the case for betting operators whose financial depth is limited), a financial professional would speak of hedging. These operations can also be compared to reinsurance transactions made by companies whose risks are too concentrated in order to diversify their portfolio (the reinsurer being tasked with ensuring the pooling of its risks). These hedging operations increase the transactions and interdependence between betting operators; but there are, to date, no studies on the use of the betting markets by the betting operators themselves. There is no reason to think that all bookmakers hedge their risks wisely; one can think on the contrary that some may even take additional risks on the market: what would happen if such a reckless operator would not honour its commitments? Other operators who will have contracted with him to ensure their positions would see their hedge neutralised and might turn to bankruptcy protection since they will have lost the protection they thought they had. Thus, betting markets certainly allow large scale risk exchange, but also a dissemination of these risks, which are known to have caused not only the ruin of some financial institutions but also the collapse of entire systems, had it not been for the intervention of States. Sporting bets made on fixed events that are also hedged could lead to a new subprime crisis.

²⁷⁰ This is further proof of the insensitivity of passionate bettors to the cost of bets. To the extent that the maximum odd is determined by the inverse of the probability of success, it is only possible to adjust the odds by increasing the RRB, as discussed in the paragraph entitled "cost of bets." In the absence of new information which would lead to the revision of the probabilities of a win, any increase in the odds reflects an increase in the RRB.

The financial analogy does not mean that bets sold sports to finance, but that some instruments of analysis (e.g. the concepts of insider trading and hedging) and fraud detection could be usefully borrowed from financial theory. Difficulties seen in financial markets that are subject to transparency requirements lead, however, to doubts about the opacity of the sports betting markets and its possible consequences: an unexpected crash of betting operators does not seem to completely unlikely.

§ 5. The Impact of New Forms of Online Games on the Manipulation of Sports Competitions

In recent years, beyond "traditional" bets (which involve placing a bet presenting a monetary value), one can observe the emergence of more and more "free" games.

These games can be downloaded from the Internet to a computer, a game console, a Smartphone, a tablet, a TV (which recently became a "Smart TV" that allows users to directly download applications), etc. Through console gaming networks and smart TVs, it is now quite possible to organise bets between several individuals, or even paid tournaments. The player signs up on a website, pays an entrance fee and participates to various games, competitions, etc. He may also be required to pay a sum of money to go from one level to the next.

Some of these games have already acquired the status of sports (chess, go, tarot, etc.). SportAccord, an association of international sports federations, officially considers them as non-Olympic sports and also organises the "Mind Games" tournament.

Other console games or even role playing games are considered as true sports by their practitioners and could also claim that status officially, especially when they have or create an international federation. The Council of Europe's Convention on the Manipulation of Sports Competitions, open to signature on 18 September 2014 also leaves an open door in this regard since it defines an athletic competition as "any actual sporting event organised according to the rules established by a sports organisation listed by the Monitoring Committee of the Convention [...] and recognised by an international sports organisation or, where appropriate, another competent sports organisation."

In any case, many games available on the Internet are supposedly free but in reality, they can lead to gambling, either directly (two individuals make a bet) or indirectly (through a subscription or an entry fee in a tournament for example). To date, these games are not "regulated" by the authorities in charge of gambling, since they are not considered as gambling games. Some games use informal currency systems such as "Bitcoins" which is clearly intended at circumventing the existing laws. Therefore, they fall into the category of illegal games discussed above and must be addressed in a similar manner.

They currently being scrutinised by online gaming regulators, especially since the appearance of more and more virtual slot machines, which do not require betting money. However, these modern casinos sometimes allow users to redeem points for gifts or even sell their "capital points" to others.

A. The Multiplication of Social Games

The development of social media, and Facebook in particular, led to the emergence of "social games". "Social games" involve two or more individuals. In some cases, the winner receives a form of reward (e.g. points), but not necessarily.

"Social Games" present four characteristics:

- They allow an individual to play with or against someone;
- They are grounded in social platforms such as Facebook;
- Individuals can monitor, for a given game, the activity of their "friends" on the social platform;
- These games are oriented towards entertainment and are not intended in principle to make profits for players. They are therefore not addressed to the real players attracted by the hope of monetary gain.

The development of the "social games" sector is mainly linked to Facebook's development. A report published in 2012²⁷¹ indicates that more than half of Facebook's users are involved, in one way or another, in social games. This represents 10% of the total time spent on Facebook. In fact, Facebook has therefore become a real tool for gaining notoriety, transmitting one's image and recruiting new players for betting operators, who try to seduce potential "fans".

B. Risks of Manipulation linked to "Social Games"

Although the area of "social games" is still in its infancy, one should be aware of the following potential hazards:

- First of all, some forms of sporting bets between individuals, via social platforms, can escape regulators and lead to illegal bets. In general, bets between friends involve small wagers or gifts, however, however, it is advised to closely monitor the evolution of this "market", which still poorly known to date;

²⁷¹ iGaming Social Marketing and Strategy Report (iGaming Business, 2012).

- Certain forms of skill, intelligence, and role games can be considered as sports. In addition, to the extent they involve competitions where the winner can win points, gifts or money, it cannot be excluded that they can give rise to fraud, cheating or manipulation.

For this new booming sector, one can primarily recommend vigilance and the implementation of appropriate supervision mechanisms. However, in 2014 it is not reasonable to say that social games represent a real threat in the area of illegal bets or the manipulation of events.

However, it is important to emphasise the risk of criminal approaches that use social platforms, starting with Facebook and Twitter. Many criminals are now using these platforms to make contact with athletes, referees, *etc.* anonymously. In fact, even when athletes report the person who approached them, it is impossible to identify this person. Examples of athletes having encountered such situations, particularly in individual sports such as tennis, are innumerable. Via social platforms, criminals offer athletes a "deal" and wait to see which athletes take the bait, that is to say those that answer, even trivially, to the original message. Some criminals attempt to intimidate athletes through threats, in order to get them to manipulate a meeting. Following this observation, it seems appropriate to recommend at least some consultation between public authorities, the sporting movement and social platforms in order to better understand the current risks, find solutions together in order to address them, and inform and educate those involved in sport on the nature of these risks.

§ 6. Money Laundering and Transnational Organised Crime

Money laundering is another factor that is now clearly identified and that has profoundly influenced the development of sporting bets.

What is money laundering?²⁷²

A person engaged in paid illegal activities cannot fully benefit from the fruits of the crime if they are not able to justify the income. It is therefore required to integrate (or pretend to integrate) this illegal income in the legal economy. In this sense, money laundering creates an organic link between the legal economy and the underground economy. It is consubstantial to both markets. For example, by injecting dirty money into an "official" business, Triads allow these companies to access to large cash amounts and make them more competitive with foreign companies.²⁷³

Beyond the mere legitimisation of funds, money laundering operations also contribute to the strategy of concealing criminal activities. Indeed, the absence of suspicious funds around the criminal protects him from the public authorities' detection tools. Laundering is essential for any illegal economic enterprise.

²⁷² Paragraph prepared in partnership with IRIS, see *Money Laundering: a New Plague for Sporting Bets?*, *op. cit.*

²⁷³ A. RODIER, *Les Triades, la menace occultée*, Monaco, Éditions du Rocher, 2012, p. 12

The money laundering mechanism is generally explained by distinguishing three stages:²⁷⁴

- Firstly, "**placement**", which allows illegal cash to be introduced into the financial system and take a scriptural form. The conventional technique was to enter a bank with a suitcase full of cash and ask the clerk to deposit the funds in an account, the vigilance of banks now requires the criminal to find alternative methods. Generally, the money is passed through deposits in financial institutions, or by the purchase of different kinds of monetary instruments (traveller's checks, currency, bearer bonds) or in the form of tradable goods as monetary instruments (diamonds, gold). This is the critical step in the laundering process, since money loses its physical character, and takes a virtual form that is a lot more malleable and discreet.

- The second phase involves **dispersion** (or stacking, or conversion); in which launderers multiply the financial transactions to hide the original source of funds and the identity of the real owner. These operations can be purchases and resales of fictitious goods and services, electronic fund transfers, financial transactions such as loans secured by the deposit of an equivalent amount in the bank's coffers, false invoices. The offshore system (tax havens), by not inquiring about the origin of the assets or their owners, or the activities conducted through their financial systems, presents many advantages for such operations.

- Finally, the **integration** phase (or recycling) completes the laundering process. The funds that were illegally introduced and dispersed are then reinvested in the legal economy. These cost-effective and legitimate investments may take the form of real estate projects, the purchase and sale of businesses, shares, etc.

As has been said repeatedly, sporting bets, driven by the development of the Internet, witnessed profound changes over the past fifteen years. However, before the changes in the offer of bets, marked by the advent of "live betting" and "betting exchanges", the nature of the operators is what primarily amplified the risk of money laundering. *Between 1995 and 2014, bets went from a "small world" of bookmakers and lotteries, where a few hundred organisations limited to their territory coexisted, to a jungle of tens of thousands of operators, without borders, often with opaque structures and in constant movement.*

In this context, the main area of risk of money laundering linked to sporting bets concerns the regulation and supervision of the operators themselves. Mainly established in tax havens, that have also become gambling havens, sporting bets operators regularly offer their services via the Internet without having the required licences. Thus 80% of the today's global bets are illegal, which places sporting bets in a "deficient market."²⁷⁵

²⁷⁴ É. VERNIER, *Techniques de blanchiment et moyens de lutte*, 3rd edition, Dunod, Paris, 2013.

²⁷⁵ Working session of the Sorbonne-ICSS Research Programme on Ethics and Sport Security, 14 December 2012.

This problem is not specific to betting or gambling, since it results from the dual use by organised crime, of offshore jurisdictions and the Internet's global character. Like gambling, many activity sectors are thus affected by the placing of an illegal offer on the market, starting with counterfeit drugs and luxury goods. However, the particularity of online games is that they allow the transfer, in the form of winnings, of illicit money to the bank account of a well regulated country. They can therefore be used to launder dirty money. *Beyond the difficulty of tracing funds that transit between several countries, this phenomenon is reinforced by the fact that illegal betting is generally not an offence, much less a crime. For a drug dealer, this is an ideal tool: potential substantial gains having been laundered, there little or no risk of getting caught and little or non-existent dissuasive sanctions.*

Moreover, the Internet has more weaknesses than the physical networks in terms of money. Firstly, because it is possible, as explained above, to launder money through illegal bets on the Internet, whereas dirty money in the street is much harder to launder, even if it is made with a "savage" bookmaker. Secondly, big instances of money laundering, above one million euros, are difficult to organise through outlets. Indeed, the shops of physical operators, which are subject to various procedures, are primarily targeted to launder money derived from "secondary" offences: concealed work, small instances of drug trafficking. Anonymity is not everything, especially since the most responsible operators seem to have understood the scale of the risk: registration winners above a certain level of earnings, identifying recurring winners, establishing classifications, *etc.* On the Internet, many operators do not seem to show the same professionalism, primarily because the competition is tough and because the launderer is in a sense an "ideal" client: he agrees to regularly lose a lot of money without putting the fixed-odds operator in financial danger. Only totally legal online operators (lotteries, PMU, SNAI, *etc.*) or those who tend towards legality (Paddy Power, Ladbrokes, William Hill, *etc.*) seem to negate this affirmation, even if some of them have officially protested against the interesting draft of the 4th European directive against money laundering. Deficiencies or even violations of the regulations by other operators are innumerable: targeting bettors in countries where they are considered as being illegal, serious deficiencies in the verification of the identity of their customers, payments to offshore accounts without verifying the account's owner, accepting payment methods favouring anonymity, average rates of return to players above 93%, extremely high betting limits for "good customers", no reports of suspicions to financial authorities, *etc.* The widely reported cases in the United States - the leading country in the fight against cybercrime linked to online games - demonstrate the seriousness of the phenomenon: many online betting sites helped launder money derived from "serious criminality", mostly through Central American sites. On this subject, the examples of BetonSports and Legendz Sports should be mentioned.²⁷⁶

²⁷⁶ Ch. KALB and P. VERSCHUUREN *Blanchiment d'argent, un nouveau fléau pour les paris sportifs*, *op. cit.*

In addition, it appears that the fight against money laundering, which essentially constitutes a difficult subject for States, is a real headache for online bets. This is obviously not a priority for most national sporting bets regulators, which lack both the means and the expertise on a complex and recent subject. This is an almost impossible challenge for police units specialised in cybercrime, who must deal with the lack of cooperation of some countries and the incredible ingenuity of organised crime, whose members have mastered assembling structures with multiple twists and international ramifications. Moreover, it is difficult to criticise some betting operators, which, even when subjected to real controls, do not always contribute proactively to the process of eliminating illegality. Looking at the problem from their perspective, the competition is tough, especially when it is illegal, and making "too much" of a fuss would simply entail leaving some "risky" customers for the less scrupulous neighbouring operator. That being said, it is not impossible to consider, as an objective the example of banks, who are asked to sort their customers, and betting operators should be strongly encouraged to enter a proactive approach through such a scheme.

Whatever the amount of money laundered through sporting bets, which is impossible to accurately estimate, it appears that the numbers sometimes mentioned (\$140 billion per year²⁷⁷) are plausible. This would mean that over 10% of global revenues of organised crime are laundered through sporting bets.

Through its complexity, the problem of money laundering linked to sports bets must pass a thorough examination of the industry itself: do States want their citizens to gamble for fun, as part of a recreational activity? In such an event, these States will have to adapt sporting bets products as well as their characteristics, starting with the rate of return to players that should be capped and the level of wagers to be controlled, so as to return to more "reasonable" bets. Conversely, if the prospect of a market of professionals does not scare them, they will need to clarify the boundaries of an industry which would require the establishment of some rules and regulations. Otherwise, given the risks inherent to the business, without mentioning the losses related to tax revenues, some States may unintentionally provide opportunities for criminal networks. Indeed, money laundering poses a real threat to States because it is directly proportional to domestic criminal activity.

²⁷⁷ Estimate provided on several occasions by Valérie FOURNEYRON, French minister of Youth and Sports from May 2012 until March 2014. See her interview with the newspaper *Corsematin.com* of 7 February 2013: "In 2011, Interpol had estimated that mafia networks used bets to launder 140 billion dollars per year" [<http://www.corsematin.com/article/home-page/valerie-fourneyron-le-sport-a-guide-ma-vie.893492.html>] and the interview with newspaper *Le Nouvel Observateur* (NouvelObs.com) dated 30 May 2013 [<http://tempsreel.nouvelobs.com/sport/20130530.OBS1419/valerie-fourneyron-paris-sportifs-et-blanchiment-d-argent-un-fleau-enorme.html>]. This estimate was then used by the French National Assembly's Committee on Cultural Affairs and Education during its session held on 27 March 2013 (16:30 session, minutes number 36). See also the documentary of Hervé MARTIN-DELPPIERRE, « Sport, mafia et corruption », broadcasted on Arte on 8 May 2012. See also É. VERNIER, *Techniques de blanchiment et moyens de lutte*, 3rd edition, Dunod, Paris, 2013

Finally, we must not forget that money laundering is a global and systemic phenomenon. Sporting bets and gambling more generally, are but one link in the chain while banks remain a key detection instrument since they are at the heart of the financial system and any attempt to launder money must transit through them at any given time.

As Jean-François Gayraud says, "States are still in the stone age of the fight against money laundering."²⁷⁸ Organised crime is so versatile that it knows how to choose the industry and the country it will target at a given time. Today, sports bets constitute a partially uncontrolled activity worldwide. This is why organised crime includes this activity in its strategy.

Conclusion of Section 1

As suggested at the beginning of this section, the factors of development of a transnational market for sports bets carry multiple risks in terms of manipulation of sports competitions. The opening to competition of a well-established market for sports bets in world economics, the growing complexity of the betting types and formulas, their financierisation, their partial transformation into a professional market, and finally the opportunities they offer for money laundering are phenomena that need to be regulated, especially since they have grown at an astounding rate.

But are the regulation models for sporting bets in this transnational context effective? This is the subject of Section 2.

Section 2. The Models for Regulating Sporting Bets in a Transnational Context

Hazard games and gambling are services (a hope to win money against the payment of a price).

States usually provide restrictions to the operation of such games for reasons of general interest, which are mainly:

- An objective of consumer protection (to prevent addiction to gambling);
- An objective of defending public order (preventing crime and fraud).

Europe, in its Union case law, has recognised the right of States to take restrictive measures even if gambling and hazard games are subject to the freedom of establishment and the freedom to provide services. This means in particular that the current state of European Union law (January 2013), that is to say without Community harmonisation; there is no mutual recognition between Member States concerning gambling.

²⁷⁸ Interview with Jean-François GAYRAUD directed by Iris, 8 April 2013.

Thanks to this margin of appreciation, States have four possibilities:

- Completely prohibiting games (prohibition);
- Granting exploitation rights determined under a certain regulation (requiring game operators to adhere to some specifications):
 - Either an exclusive right granted to a single operator (monopoly);
 - Or a right granted to a limited number of operators (multiple licences);
 - Defining a general authorisation regime without limiting the number of operators.

It should be kept in mind that prohibition, like monopoly and the licencing system, is a regulatory mode. In a deeply transnational context, it is obvious that the implementation of national regulations has some limitations when the citizens of a country are able to bet on sites deemed illegal, especially when the country concerned does not effectively combat operators to whom it has not given an authorisation (§ 1). It is the same for different taxation models associated with sporting bets (§ 2).

§ 1. Different Regulatory Models for sporting bets around the world

After an examination of the different regulatory models for sporting bets in the world, it should be possible to make an assessment of their effectiveness (A). But effectiveness is also conditioned by the impact of European Union law and International law on these models (B).

A. The Diversity of the Regulation Models for Sporting Bets

Gambling is a delicate activity because it involves issues pertaining to public order (fraud, corruption, money laundering) and social order (gambling addiction). Throughout history, States have often alternated phases of prohibition and authorisation. Each jurisdiction having its own historical, cultural, and legal specificities but also a particular level of vulnerability vis-à-vis criminal activities, methods of regulation of sporting bets vary according to each country, and often according to the period. Before the 60s, bets on football were banned in the UK whereas they are now widely democratised in the country.

1. Classification of the National Regulation Models

There are basically four systems:

- The first is the exception regime, inherited from Roman law, which allowed money games while considering them as *void*. Article 1965 of the French Civil Code provides a modern interpretation of this *game exception*:

"The law provides no remedy for a gambling debt or for the payment of a bet";

- The second is a **pure and simple prohibition**;
- The third is **regulation**;
- The fourth is **freedom** subject to the possession of a licence

It is possible to characterise with a little more precision each of the four regimes.

a. Prohibition

The prohibition of gambling is common in the first societies because their lot drawing devices are frequently sacred (Coumet (1970)). Leaving fortune to sacramental or divinatory practices is in fact a way to limit the spread of games in society, but this prohibition is not always complied with. Even in countries where prohibition is strict (such as Saudi Arabia), there are ways to gamble. Clandestine bets come to mind first: they are not very common and there are no known cases, but it is possible for Saudi residents to travel or use proxies to connect to online betting sites that are normally blocked by the religious police. In addition, strict prohibition leads to a cost increase for accessing bets. The richest or the most motivated bettors can indulge their passion while others are "protected" from this vice by the law. This balance is comparable to the one witnessed in France's *ancien régime*, where the court and the elite were regularly involved in the game while the people had gambling dens and suffered exemplary sentences.²⁷⁹ Therefore, it can be said that prohibition often establishes a *difference between the law and reality*.

This distinction between law and fact raises the question of the consistency of the principles and effects of legislation: Turgot (1770) provided an analysis that surprisingly foreshadows Kuran's work (1995)²⁸⁰ by showing that this disjunction produces unpredictable effects that are often very different from what the legislators intended.

More generally, the scope of the term "prohibition" is relative because it is possible to prohibit the supply of bets (as is the case in India or Great Britain during the 1950s, see Hill (2010)²⁸¹) and also suppress consumption (French *ancien régime*, Sharia-based contemporary regimes), and this prohibition can be implemented with more or less force.

²⁷⁹ F. FREUNDLICH, *Le monde du jeu à Paris, 1715-1800*, Albin Michel, Paris, 1995.

²⁸⁰ A.R.J. TURGOT (1770), "Mémoire sur les prêts d'argent", in: *Œuvres*, Daire, Paris, Guillaumin, 1844.
T. KURAN, *Private Truths, Public Lies: The Social Consequences of Preference Falsification*, Cambridge, Mass, Harvard University Press, 1995.

²⁸¹ D. HILL, *op. cit.*

At the federal level, the United States consider their laws as having a universal application, and they prosecute individuals who contribute to selling illegal bets to U.S. citizens, regardless of the country of registration of their corresponding economic activity: thus, for example, the British boss of BetonSports was arrested during a connecting flight to Texas because his company, registered in England and Costa Rica, accepted bets placed by U.S. citizens (2006).²⁸² By contrast, in Germany, you need a disorder manifest public order to turn public action. In this perspective, the regime of exception appears as a limit on the prohibition regime.

b. Legal Authorisations

Inherited from Roman law where betting was allowed under certain conditions but where disputes between players were not addressed by the law, the scheme fell apart ever since the "domestication of risk" in the modern era.²⁸³ Socially organised bets (PMU and lotteries) in particular, like financial markets,²⁸⁴ were excluded from the exception: in France, the sporadic King's edicts authorised lotteries, then the law 1885 has brought the futures markets within the confines of the law, the Law of 2 June 1891 established the pari-mutuel bet, etc. until the derivative financial markets towards the end of 1980 (Law No. 84-46 of 24 January 1984 concerning the activity and regulation of credit institutions). This regime seems almost incomprehensible today as it is residual, but it can be understood as the *limit of the prohibition regime*: it is actually a prohibition without means.

Why bother? In fact, it is possible to imagine a symbolic difference and nuance effectiveness. From a symbolic point of view, the exception aims at avoiding a degradation of the public authorities' image when they do not have the means to effectively enforce the prohibition. This avoids the disjunction between law and fact which may be harmful to the social contract itself (Turgot [1770] Kuran).²⁸⁵ From a practical point of view, the prohibition can create opportunities for the organisation of a parallel market by criminal societies: the prohibition of the sale of alcohol in the United States in the 1920s led to the development of the mafia. This example is particularly revealing regarding the weaknesses of prohibition. The exception regime is different since those offering products affected by the exception are not considered as operating illegally. This approach is more comparable to the general authorisation regime in force since January 2014 in the United Kingdom regarding sports bets. Operators licenced in a country that is not part of the "English white list" are not considered illegal when they offer their services through the Internet to British citizens.

²⁸² The Economist (2006), "Out of luck: An arrest signals America's intention to clamp down on online gambling", July 20. Available at [<http://www.economist.com/node/7201909>].

²⁸³ E. COUMET, "La théorie du hasard est-elle née par hasard ?", *Annales E.S.C.*, n° 9, may-june 1970, pp. 574-598.

²⁸⁴ P.-C. PRADIER, "Les bénéfiques terrestres de la charité : les rentes viagères des Hôpitaux parisiens 1660-1690", *Histoire & Mesure*, 2011, XXVI (2), pp. 29-74.

²⁸⁵ *Op. cit.*

Therefore, legislators have tended - usually for tax reasons – to move away from the exception regime. It is therefore necessary to consider other regimes.

c. Regulation and Freedom Subject to Licences

The licencing regime is a product of a double intention: *consumer protection* on the one hand, and on the other hand, the *maintenance of public order and health* (the devastation caused by addiction to gambling are known through a series of real or fictitious figures, including Dostoevsky's idiot, Eduard Duwes Dekker, European courts as viewed by Barry Lyndon, idlers who spend their time in front of slot machines, not to mention the Roman soldiers who gambled away Christ's tunic, *etc.*). On the second point, European law recognises for example the possibility of restricting the supply of gambling (through the granting of an exclusive right, called monopoly, to a gambling operator) to fight against the problems of public order and health; consumer protection implies at least the approval of gambling providers. In Italy, the "*Agenzia delle dogane e dei monopoli* " is tasked with allow companies that meet the legal requirements to operate.

In fact, public concern is due to the consideration given in exchange for an authorisation: the levying of taxes is the deciding factor for allowing gambling. In this way, lotteries had been funding pious works and public property in Europe since the fifteenth century, followed by horse racing during the 19th Century and online gambling in the late twentieth century. The current Governor of New Jersey has followed suit.²⁸⁶ It seems natural that if public authorities allow games to increase their revenue, they should take the necessary actions to preserve public order. This conception of public action seems typically continental and readily accommodates monopolistic systems. By contrast, the British prefer a combination of generous licencing and supervision; licence holders are thus responsible for the effect on the public of their services. Fiscal resources are inferior to those that can be seen in a State monopoly, but the costs of maintaining public order are also smaller.

The principles now having been presented, we can look to the development of the legal regimes.

d. The Development of the Legal Regimes

More generally, *all types of regulation increase the price of gambling (i.e. the ratio of the bet and the average potential gain) and may tend to move games towards cheaper markets when States do not implement means to combat illegal gambling.* If the means of communication are underdeveloped, the regulation can easily cause prohibitive costs and enforce the prohibition or monopoly, with the exception of potential criminal offers.

²⁸⁶ See box below.

Therefore, national operators (if they exist) may impose specific methods of access to bets: until the early 2000s, English bookmakers generally required bettors to bet on at least three games, while in the European continent, sports bets were generally only available in the mutual and pooled forms (bettors had bet on nine to twenty different games). Also, the issue was not whether or not bets were but who actually controlled the sports betting market. The following table summarises the facts presented in this paragraph.

Comparative Characteristics of the Different Regimes

Regime	Intensity of the Regulation	Regulatory Authority	Institutional Form of Betting Providers	Prevalence of Betting in the Country	System Payoff Rate	Sporting Fraud
Exception	0	None	No contract, Unregulated individual bookmakers, linked (or not) to organised crime	Maximum	None	Seems to be variable and independent from the regulatory regime
Regulation	Weak	State	Generally licences (bookmakers or National companies)	Significant	Relatively low tax revenue, customer satisfaction hard to measure	
Regulation	Strong	State	Generally State monopoly	Depends on regulation and taxes – could cause public order issues	Significant fiscal revenues, but also significant administrative charges	
Prohibition	1	State as religious/ moral authority	Illegal bookmakers generally linked to organised crime	Minimal	None; cost of repression borne by taxpayers	

These regulated national balances can obviously be challenged by the development of means of communication that could significantly reduce the cost of alternatives. This is what happened in the mid-1990s.

2. Mapping of National Regulatory Systems in Force

In this context, the study made by the Sorbonne-ICSS Chair on ethics and integrity in sport at the Paris 1 Panthéon-Sorbonne University worked on identifying the existing regulatory models worldwide.

The analysis was carried out between October 2012 and February 2013 among the 204 countries officially recognised by the International Olympic Committee.

Since regulatory models have a dynamic evolution, it is important to consider the landscape below as a map. Some laws have therefore evolved after February 2013; this is for example the case in the state of New Jersey, which opened its domestic market of online gaming to competition.

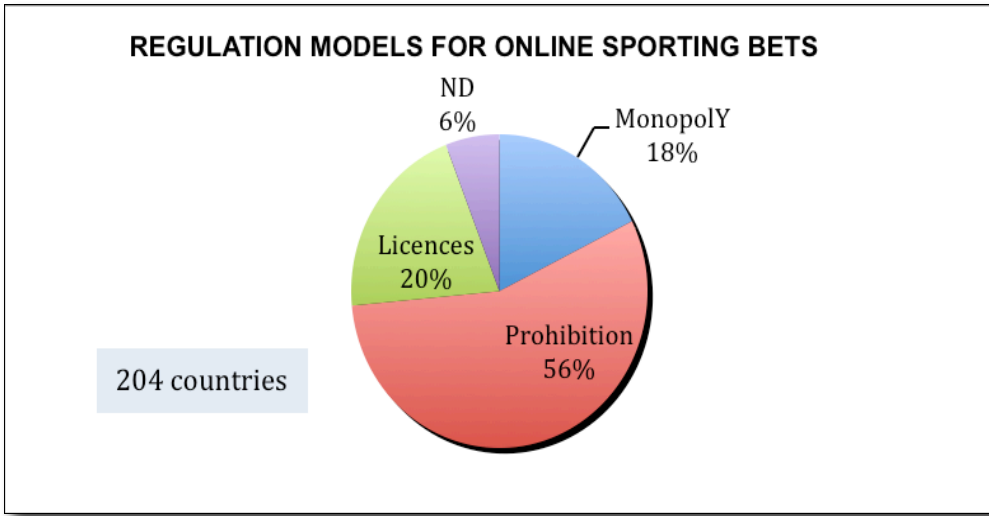
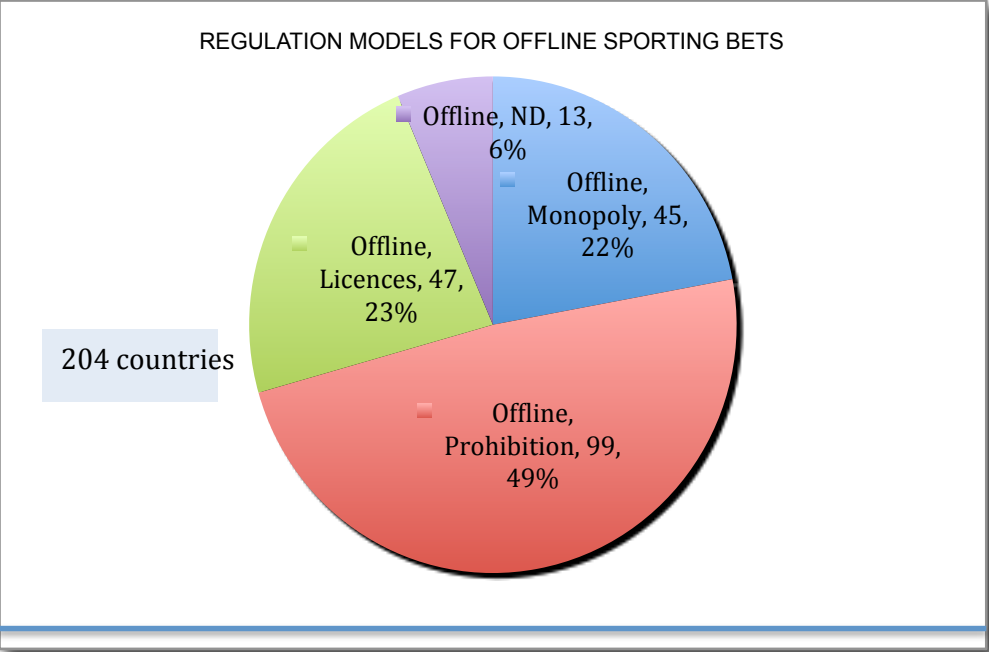
The New Jersey Example

In November 2013, the New Jersey department of gaming regulation granted 12 Atlantic City casinos the right to offer their games online. On 26 November, was held the official online opening of online gambling in the U.S. state. Online gambling is limited to residents of New Jersey, and players must create their accounts through a physical casino. More than 125,000 accounts have been created by end of December 2013.²⁸⁷

However, the New Jersey legislation, adopted despite the opposition of several professional sporting leagues, was judged incompatible with a 1992 Federal law on the protection of amateur and professional sports (PASPA). The United States Supreme Court having, in June 2014, refused to grant the writ of certiorari to the recourse against the decision of the Third Circuit Court of Appeal, the state of New Jersey is still prohibited from implementing a State law on sports bets.

The PASPA in fact limits to Nevada, Delaware, Montana and Oregon the right to offer sports bets.

²⁸⁷ Source: *Totally Gaming* (31 December 2013).



Among the countries that have adopted a prohibition system it is possible to mention especially Islamic countries and many Asian countries (India, Indonesia and Thailand) as well as the USA (excluding Nevada).

The main countries still implementing a monopolistic system are China, Japan, Canada, several countries in Latin America and Scandinavia (excluding Denmark).

Most major European countries (often pushed by the European Commission) chose a licencing model, as well as Mexico, Australia and many smaller States wishing to boost the local economy (Central American islands, Malta, Cagayan Province in the Philippines, etc.).

Lastly, it was difficult to determine the current model in a dozen states such as the Virgin Islands, Kiribati and the Marshall Islands. It is perhaps in these countries, which represent a tiny proportion of the world population, where it is still possible to find "non-regulated" markets.

B. The Impact of European Union Law and International Law

Whether it is a matter of the rules applicable to sporting bets in the European Union (1) or rules arising from international economic law (2), they reflect a tendency towards the liberalisation of the supply of gambling that will not happen without constraints from interventionist States which want to further regulate the sector.

1. Rules Applicable to Sporting Bets in the European Union

Gambling activities, including sporting bets, have not yet been subject to harmonisation in business law in the European Union.²⁸⁸ However, the sector is subject to liberalisation since it enters the scope of the freedoms of movement guaranteed by the Treaties and European case law.²⁸⁹

a. The Applicability of the Freedoms of Movement to Gambling and Betting Activities, including Sports Bets

In the 1994 Schindler decision, the Court of Justice clearly laid down the principle according to which gambling and betting activities constitute a service activity within the meaning of Article 60 of the EEC Treaty and consequently fall within the scope of Article 59 of the EEC Treaty on the freedom to provide services (which became Article 49 TEC and currently Article 56 TFEU),²⁹⁰ which it subsequently confirmed in the *Läära* and *Zenatti* decisions in 1999.²⁹¹ Thus, the restrictions imposed on gambling and betting providers should be regarded as restrictions to the freedom to provide services. In addition, the Court noted in its *Gambelli* decision of 6 November 2003, that:

²⁸⁸ This sector is not included in the scope of application of the 2006/123/EC directive from 12 December 2006 concerning services in the internal market. It is, however, included in the scope of application of other directives, such as the Parliament and Council's 26 October 2005 directive concerning the prevention of the use of the financial system for money laundering and terrorism financing purposes (directly "anti-laundering") which do not have the main objective of liberalising the market.

²⁸⁹ For an in-depth analysis of the law applicable to online games, see M. BEHAR-TOUCHAIS, J. ROCHFELD, A. DE GUILLENCHMIDT-GUIGNOT, *Les jeux en ligne en France et en Europe: Quelles réformes trois ans après l'ouverture du marché?*, Paris, Société de législation comparée, Collection Trans Europe Expert, vol. 7, 2013, pp. 276 *et seq.*

²⁹⁰ ECJ, 24 March 1999, case No. C-275/92, *Gerhart Schindler*, Rec. I-1078, pt. 25 *et seq.*

²⁹¹ ECJ, 21 September 1999, C-124/97, *Läära*, Rec. I-6067; CJCE, 21 October 1999, C-67/98, *Zenatti*, Rec. I-7289.

“the freedom to provide services involves not only the freedom of the provider to offer and supply services to recipients in a Member State other than that in which the supplier is located but also the freedom to receive or to benefit as recipient from the services offered by a supplier established in another Member State without being hampered by restrictions.”²⁹²

In other words, free movement of services includes not only the freedom to provide services, but also to the freedom to consume these services. This is important concerning the measures proposed to combat the risk of fraudulent bets and manipulation of sports competitions. By prohibiting certain potential bettors (e.g. athletes and members of their entourage) from betting on certain events, such a measure falls within the scope of the Treaty provisions on the free movement of services.

The Court also considered that restrictions to the methods of providing services linked to games and bets may constitute obstacles to the freedom of establishment. As businesses, gambling and betting operators benefit from the freedom of establishment of Article 49 TFEU and a national measure which would, for example, prevent foreign operators from establishing themselves on the national territory or forbidding the collection of bets via another operator established in the territory of another member State constitutes a restriction to the freedom of establishment.²⁹³

These principles apply to all types of gambling and betting activities which have the same characteristics as lottery games.²⁹⁴ This is true of lotteries organised by the States, even when the profits collected are allocated to the achievement of certain general interest objectives.²⁹⁵ The same goes for sporting bets, concerning which the Court held that:

“Bets on sporting events, even if they cannot be regarded as games of pure chance, offer, like games of chance, an expectation of cash winnings in return for a stake. In view of the size of the sums which they can raise and the winnings which they can offer players, they involve the same risks of crime and fraud and may have the same damaging individual and social consequences.”²⁹⁶

The fact that it is a question of sports bets therefore entails no specificity as to legal regime applicable to these activities.

b. The Principle of Liberalisation of Gambling and Betting Activities

Given the foregoing, the Court was quick to say that any restriction imposed on suppliers of games and bets constitutes an obstacle to the freedom to provide services (and less frequently to the freedom of establishment) within the meaning of Article 56 TFEU (ex Article 49 TEC).

²⁹² ECJ, 6 November 2003, case No. C-243/01, *Piergiorgio Gambelli e.a.*, pt. 55.

²⁹³ *Gambelli, op. cit.*, pt. 46.

²⁹⁴ To the exception of certain specific cases such as for example quizzes found in magazines as crossword puzzles or riddles, ECJ, 26 June 1997, case No. C-368/95, *Familiapress*.

²⁹⁵ ECJ, 24 March 1999, case No. C-275/92, *Gerhart Schindler*, pt. 34.

²⁹⁶ ECJ, 21 October 1999, case No. C-67/98, *Diego Zenati*, pt. 18.

The case law is in fact particularly abundant, the Court of Justice being almost always entered on the basis of Article 267 TFEU (ex Article 234 TEC), that is to say in the context of a request for a preliminary ruling that is addressed to it by a national court.

Thus in the 1994 *Schindler* decision, the first case where the Court of Justice was confronted with such an issue, it stated that "a national legislation that [...] prohibits, barring exceptions determined by the Court, lotteries in the territory of a Member State constitutes a restriction to the freedom to provide services."²⁹⁷

Since this decision, it is settled case law that a national legislation concerning the gambling and betting sector constitutes an obstacle to the freedom to provide services:

"even if those restrictions apply without distinction to national providers of services and to those from other Member States, when they are liable to prohibit, impede or render less advantageous the activities of a service provider established in another Member State where it lawfully provides similar services" and insofar as "the freedom to provide services is for the benefit of both providers and recipients of services"²⁹⁸

This case law also obviously covers gambling and betting monopolies. But it can also cover regulations requiring permits or approvals from a gambling operator legally operating in another Member State, and to provide, in case of violation of these requirements, criminal penalties.²⁹⁹

However, as in any sector, restrictions to the freedom to provide services (and the freedom of establishment) can be justified on the one hand, as a derogation expressly provided for by Article 51 TFEU (ex Article 45 TEC concerning activities connected with the exercise of official authority) and 52 TFEU (ex Article 46 TEC concerning national measures providing for special treatment for foreign nationals and justified by reasons of public policy, public safety and public health) or, on the other hand, by the jurisprudence of the Court of justice for overriding reasons of general interest.³⁰⁰

²⁹⁷ *Schindler*, *op. cit.*, pt. 54.

²⁹⁸ ECJ, 8 September 2009, case No. C-42/07, *Liga Portuguesa de Futebol Profissional et Bwin International Ltd*, pt. 51. See also concerning the Greek regulation: "It is common ground that a Member State's legislation, such as that described by the national court, constitutes a restriction on the freedom to provide services guaranteed by Article 49 EC or on the freedom of establishment guaranteed by Article 43 EC inasmuch as it provides for a monopoly for OPAP and prohibits providers such as Stanleybet, William Hill and Sportingbet, established in another Member State, from offering games of chance on Greek territory". CJEU, 24 January 2013, case No. C-186/11, *Stanleybet and Sportingbet*, pt. 21.

²⁹⁹ In this context, the ECJ was often faced with the Italian law providing: 1. That an operator wishing to pursue, in Italy, an activity in the gambling sector requires a licence from the State; 2. A method of awarding these licences, by means of a tender excluding certain types of operators and, in particular, companies whose individual shareholders are not identifiable at all times (esp. listed companies); 3. The requirement to obtain a police clearance and 4. Criminal sanctions in case of non-compliance with the relevant legislation.

³⁰⁰ Since the ECJ case dated 20 February 1979, case No. C-120/78, *Cassis de Dijon*, pt. 8.

Here, the second case is interesting, since the Court pointed out, in the 1999 *Schindler* case that:

“Given the peculiar nature of lotteries, which has been stressed by many Member States, those considerations are such as to justify restrictions, as regards Article 59 of the Treaty, which may go so far as to prohibit lotteries in a Member State” and that “it is not possible to disregard the moral, religious or cultural aspects of lotteries, like other types of gambling, in all the Member States.”³⁰¹

The Court also noted, in connection with the same matter, that:

“The general tendency of the Member States is to restrict, or even prohibit, the practice of gambling and to prevent it from being a source of private profit. Secondly, lotteries involve a high risk of crime or fraud, given the size of the amounts which can be staked and of the winnings which they can hold out to the players, particularly when they are operated on a large scale.

Thirdly, they are an incitement to spend which may have damaging individual and social consequences. A final ground which is not without relevance, although it cannot in itself be regarded as an objective justification, is that lotteries may make a significant contribution to the financing of benevolent or public interest activities such as social works, charitable works, sport or culture.”³⁰²

In this first decision, the European judges showed caution with regard to the liberalisation of gambling and betting activities which constitute a sensitive issue in most Member States, but according to national concerns that are not always the same. This necessary caution was reaffirmed by the European Parliament in its Resolution of 15 November 2011 on online gambling in the internal market. It is noted there that “*this area is not a market like any other because of the risks involved regarding consumer protection and the fight against organised crime.*”³⁰³

In view of what can be considered as “compelling reasons”, European judges even admit that a monopoly can be justified on the basis of the Treaty.³⁰⁴ Obviously, this can only be allowed provided if the monopoly meets the requirements of European law. But the Court’s jurisprudence reflects a certain tolerance for protectionist measures. This attitude breaks with that of the European Commission, which, in 27 June 2007, decided to warn a number of states - including France – and asked them to “take measures to remove obstacles to the provision of sports bets”. However, in light of European case law, all restrictive measures are not necessarily prohibited by the Treaty.

³⁰¹ Pt. 59 and pt. 60.

³⁰² Pt. 60.

³⁰³ Resolution 2011/2084(INI).

³⁰⁴ ECJ, 8 September 2009, case No. C-42/07, *Liga portuguesa de futebol profissional and Bwin c/ Dpto de Jogos da Santa Casa da Misericórdia de Lisboa*, *op. cit.*, pt. 74; ECJ, 3 June 2010, case No. C-203/08 *Sporting Exchange Ltd*; CJEU, 24 January 2013, case No. C-186/11, *Stanleybet and Sportingbet*, pt. 29.

This is due to deep fragmentation of the market, each state having its own tradition in this area, some being very liberal (like Malta or the UK) while others operate a strong regulation over these activities, including through the establishment of full or partial monopolies on the market (France, Italy, Germany, Finland, Sweden), which makes it extremely difficult to undertake even minimal harmonisation efforts.³⁰⁵

c. Conditions Warranting a Measure Restricting the Freedom to Provide Gambling and Betting Services

Under settled law, the restrictions "must be justified by overriding reasons of general interest, be suitable for securing the attainment of the objective pursued and must not go beyond what is necessary to achieve this objective. In any case, they must be applied in a non-discriminatory manner".

i. The Identification of Overriding Reasons of General Interest

The qualification as overriding reasons of general interest of crime fighting objectives, the fight against fraud, the fight against money laundering or consumer protection pursued by the national regulations on gambling and betting services never constituted any difficulty for the Court of Justice. The Court refrains from interfering in assessing the legitimacy of these objectives, since, as was previously noted, the gaming industry is not subject to any harmonisation efforts at European level.

Thus, in the Schindler decision, the Court held that consumer protection and the protection of the social order were objectives that can justify a restriction.³⁰⁶ In the 1999 Läärä decision, the same was decided on:

"the concern to limit exploitation of the human passion for gambling, to avoid the risk of crime and fraud to which the activities concerned give rise and to authorise those activities only with a view to the collection of funds for charity or for other benevolent purposes."³⁰⁷

Can objectives linked to the preservation of sports ethics and to the fairness of sporting competitions be described as compelling reasons within the meaning of this case law? The Court of Justice was never directly confronted with this question although it is frequently faced with disputes concerning regulations on sports bets. However, even in the absence of precedent, it is possible to hold that such objectives would be admissible under compelling reasons. The Court's case law regarding the regulation of sporting activities by sports organisations tends toward this line of reasoning.³⁰⁸

³⁰⁵ On the diversity of markets and the difficulty to consider appropriate harmonisation methods, see M. BEHAR-TOUCHAIS, J. ROCHFELD, A. DE GUILLENCHMIDT-GUIGNOT, *op. cit.*, pp. 280 *et seq.*

³⁰⁶ Pt. 58.

³⁰⁷ ECJ, 21 September 1999, case No. C-124/97, *Makku Juhani Läärä*, pt. 32.

³⁰⁸ See *supra* Title 1, Chapter 1, Section 2: "Legal Framework of Sports Markets".

In addition, since sports integrity and ethics objectives also serve the purpose of protecting public order and moral order, we arrive at the same conclusion by analogy with the case law relating to betting and gambling activities.

ii. The Principle of Non-Discrimination

A measure may constitute a restriction to the freedom to provide services, even when applied indiscriminately to national and foreign operators.³⁰⁹ This is particularly the case of the establishment of a monopoly in favour of the State. A discriminatory measure, however, can never be justified under the rules of the Treaty. For example, in the *Lindman* case, the Court of Justice held that Article 49 TEC opposed the Swedish legislation under which winnings from gambling activities in other Member States are treated as the winner's income for income tax purposes, while gains from gambling organised in Sweden are not taxable.³¹⁰

The *Gambelli* case, from 6 November 2003 is even more explicit: the Italian legislation which, for transparency reasons, excluded publically traded companies from the concessions market of gambling activities was at issue. The Court found that this discrimination was unlawful because it went beyond what was necessary to attain the objective pursued to the extent that other, less restrictive measures were available to meet this goal of transparency.³¹¹

iii. The Principle of Proportionality

The requirement that the measure comply with the principle of proportionality deserves the most attention because it is through this examination that one can observe the ambivalence of the European Court of Justice's case law, torn between, on the one hand, the desire to safeguard the freedom of States and protectionist measures, which, in the field of gambling and betting activities, are more warranted than in any other field and, secondly, the need to submit Member States to European law rules. As was observed above, the Court's case law shows a certain inclination towards the first concern. Thus, in many cases, it simply exercises a limited proportionality review.³¹² But gradually, it can be observed that the specificity of this sector is snatched up by the constraints of the common market so and the intensity of this control could gradually tighten.

³⁰⁹ See in particular *Schindler*, pt. 43; ECJ, 11 September 2003, case No. C-6/01, *Anomar*, pt. 65.

³¹⁰ ECJ, 13 November 2003, case No. C-42/02, *Diana Elisabeth Lindman*, pt. 27.

³¹¹ ECJ, 6 November 2003, case No. C-243/01, *Piergiorgio Gambelli c.a.*, pt. 48. See also ECJ, 6 March 2007, joint case No. C-388/04, C-369/04, and C-360/04, *Massimiliano Placanica*, pt. 61

³¹² F. PERALDI LENEUF, "La Cour de justice et la libéralisation des jeux en ligne: l'exigence de cohérence. À propos de l'arrêt *Santa Casa*", *RTD Eur.*, 2010, pp. 7 *et seq.*

d. The Implementation of Compatibility Verification for Measures Restricting Economic Freedoms Guaranteed by the Treaties

i. The Discretion Given to the Regulating State

In the 1994 Schindler Case, the Court held that given the specificities of gambling and betting activities:

“national authorities have a sufficient degree of latitude to determine what is required to protect the players and, more generally, in the light of the specific social and cultural features of each Member State, to maintain order in society, as regards the manner in which lotteries are operated, the size of the stakes, and the allocation of the profits they yield.”³¹³

In the 2009 *Liga Portuguesa de Futebol Profissional and Bwin* decision (Santa casa), the Court also noted that:

“The legislation on games of chance is one of the areas in which there are significant moral, religious and cultural differences between the Member States. In the absence of Community harmonisation in the field, it is for each Member State to determine in those areas, in accordance with its own scale of values, what is required in order to ensure that the interests in question are protected.”³¹⁴

Finally, in the 8 September 2010 *Markus Stoß* decision, the Court further noted that:

“having regard to the discretion which Member States enjoy in determining the level of protection for consumers and public order which they intend to ensure in the gaming sector, it is in particular not necessary, with regard to the criterion of proportionality, that a restrictive measure decreed by the authorities of one Member State should correspond to a view shared by all the Member States concerning the means of protecting the legitimate interest at issue.”³¹⁵

This case law holds that Member States have a wide discretion in how they want to conduct their public policy on gambling and betting activities. This freedom is partly explained by the lack of harmonisation at the Community level, and therefore, the extreme diversity of the applicable national regimes.³¹⁶

³¹³ Pt. 61 of the decision.

³¹⁴ ECJ, C-42/07, 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International Ltd*, pt. 57.

³¹⁵ CJEU, 8 September 2010, joint cases No. C-316/07, C-358/07 to C-360/07, C.409/07 and C-410/07, *Stoß e.a.*, pt. 80. See also ECJ, 28 April 2009, case No. C-518/06, *Commission v. Italy*, pt. 83 and pt. 84.

³¹⁶ Several attempts have been made, at the Community level, to try to identify common principles for the regulation of gambling and betting activities. For example, the announcement in 2010 by Commissioner Michel Barnier, of the development of a Green Paper on the issue. The Green Paper was published under the following reference: SEC (2011) 321 final, 24 March 2011 and inspired a Resolution of the European Parliament, of 15 November 2011 on online gambling in the Internal Market (2011/2084 (INI)). Following the Green Paper, the European Economic and Social Committee adopted an opinion 26 October 2011 (OJ 28.1.2012, C 24/85). So far, harmonisation projects have not led to concrete results. The European Parliament adopted a new resolution on online gambling in the Internal Market on 10 September 2013 (2012/2322).

However, this discretion granted to Member States does not mean that they possess discretionary powers. As in any other field, after having examined the legitimacy of general interest objectives put forward by the Member States to justify the restriction, the Court must examine the proportionality of the measure in relation to these objectives. However, in a field warranting a certain margin of appreciation, the parameters of the balancing process can be adapted and the Court may agree to lower its threshold.

This is exactly the way the Court proceeded, initially, in area of gambling and betting activities. After recalling the proportionality requirement, the Court simply referred the matter to an assessment by the national judge. For example, after *Schindler*, the *Läärä* decision held that:

“the power to determine the extent of the protection to be afforded by a Member State on its territory with regard to lotteries and other forms of gambling forms part of the national authorities' power of assessment, recognised by the Court in paragraph 61 of the *Schindler* judgment. It is for those authorities to assess whether it is necessary, in the context of the aim pursued, totally or partially to prohibit activities of that kind or merely to restrict them and, to that end, to establish control mechanisms, which may be more or less strict.”³¹⁷

As part of this approach, the Court's assessment was limited to a "manifest error of assessment" of the national authorities.

However, the Court of Justice subsequently tightened its conditions. Two decisions in particular show this change. First in the *Gambelli* decision from 6 November 2003, when the Court reiterated the principle according to which it is for the national court to determine whether the measures meet the conditions of non-discrimination and proportionality. But the Court provided detailed guidelines for the national courts as well as elements that should be considered³¹⁸, and even indicated that certain characteristics of a measure would not allow it to be regarded as proportionate. The Court noted in particular, concerning the Italian legislation that:

“In so far as the authorities of a Member State incite and encourage consumers to participate in lotteries, games of chance and betting to the financial benefit of the public purse, the authorities of that State cannot invoke public order concerns relating to the need to reduce opportunities for betting in order to justify measures such as those at issue in the main proceedings.”³¹⁹

and that:

³¹⁷ Pt. 35.

³¹⁸ Pt. 69 to pt. 74.

³¹⁹ Pt. 69.

“As to the proportionality of the Italian legislation in regard to the freedom of establishment, even if the objective of the authorities of a Member State is to avoid the risk of gaming licencees being involved in criminal or fraudulent activities, to prevent capital companies quoted on regulated markets of other Member States from obtaining licences to organise sporting bets, especially where there are other means of checking the accounts and activities of such companies, may be considered to be a measure which goes beyond what is necessary to check fraud.”³²⁰

In *Placanica* judgment of 6 March 2007, the Court reinforces this approach by pointing out that:

“although the Member States are free to set the objectives of their policy on betting and gaming and, where appropriate, to define in detail the level of protection sought, the restrictive measures that they impose must nevertheless satisfy the conditions laid down in the case-law of the Court as regards their proportionality.”³²¹

and noting that

“The restrictive measures imposed by the national legislation should therefore be examined in turn in order to determine in each case in particular whether the measure is suitable for achieving the objective or objectives invoked by the Member State concerned and whether it does not go beyond what is necessary in order to achieve those objectives. In any case, those restrictions must be applied without discrimination.”³²²

Thus, it is currently the Court itself that operates this proportionality test. By practically reclaiming the exercise of the proportionality test, the Court restricted the discretion given to Member States.³²³ In addition, it recently condemned certain restrictive measures in the field of gambling and betting activities. This is for example the case in the *Placanica* decision regarding the Italian legislation. However, this consolidated method does not provide the substantive conditions under which States may adopt measures restricting trade. Nevertheless it allows to determine the elements of the proportionality test under which a restrictive measure must be examined.

ii. The Elements of the Proportionality Test

The proportionality test entails three "sub-tests" which concern: 1. the measure's adequacy; 2 the need for the measure; 3. the proportionality of the measure in the strict sense. It often happens that the Court of Justice does not rigorously apply this test, whatever the field concerned. In the field of gambling and betting, it favours the last two criteria. But even in this area, the Court has made some adjustments to the test.

³²⁰ Pt. 74.

³²¹ ECJ, 6 mars 2007, joint cases No. C-388/04, C-369/04 and C-360/04, *Massimiliano Placanica*, pt. 48.

³²² Pt. 49.

³²³ Certain recent decisions do not deviate from this line of reasoning. However, it is now well established.

- The exclusion of the principle of mutual recognition

Given the lack of harmonisation in the field of gambling and betting and large differences in the various regimes in the EU Member States, established case law provides that:

“The mere fact that a Member State has opted for a system of protection which differs from that adopted by another Member State cannot affect the assessment of the need for, and proportionality of, the provisions enacted to that end. Those provisions must be assessed solely by reference to the objectives pursued by the national authorities of the Member State concerned and the level of protection which they are intended to provide.”³²⁴

Yet, the principle of the equivalence of legislations plays an essential role in the organisation of the common market. Under this equivalence, an authorised operator in a State may, by virtue of this authorisation, offer its services to consumers residing in other States. This principle does not apply in the field of gambling and betting activities. Thus, in the *Liga Portuguesa de Futebol Profissional and Bwin* decision (*Santa casa*), the Court considered that:

“A Member State is therefore entitled to take the view that the mere fact that an operator such as Bwin lawfully offers services in that sector via the Internet in another Member State, in which it is established and where it is in principle already subject to statutory conditions and controls on the part of the competent authorities in that State, cannot be regarded as amounting to a sufficient assurance that national consumers will be protected against the risks of fraud and crime, in the light of the difficulties liable to be encountered in such a context by the authorities of the Member State of establishment in assessing the professional qualities and integrity of operators.”³²⁵

It may be noted that by making such a finding, the Court disavowed the European Commission who, in its reasoned opinion of 27 June 2007, deplored the fact that France included operators authorised in other Member States in the category of illegal operators. Generally, the Court adopts, concerning regulations on gambling and betting activities, a different logic than that of the internal market. The uniqueness of the principle of "consistency of legislations" accentuates this hiatus.

- The Principle of Coherence of Legislations

Regarding the most significant adjustments to the proportionality test, it should be noted that the consistency of legislations requirement which, although not specific to the field of gambling and betting services, plays a key role as is illustrated in the *Santa Casa* decision of 8 September 2009.³²⁶

³²⁴ *Läärä*, pt. 36; *Zenatti*, pt. 34.

³²⁵ Pt. 69.

³²⁶ CJEU, 8 September 2009, case No. C-42/07, *Liga Portuguesa de Futebol Profissional et Bwin International*, see commentary by F. PÉRALDI LENEUF, “La Cour de justice et la libéralisation des jeux en ligne : l'exigence de cohérence. À propos de l'arrêt *Santa Casa*”, *RTD Eur.*, 2010, pp. 7 *et seq.*

The Court in fact requires that restrictions based on such grounds and on the need to prevent disturbing the social order are suitable for securing the attainment of the objectives in that they must serve to limit these activities in a consistent and systematic manner. This requirement is thus a way to show States their inconsistencies when adopting protectionist systems on behalf of the general interest. The task is obviously not easy especially considering the contradictions present in the issue of the regulation of gambling and betting activities. The Court considers that this review ultimately falls on the national authorities. But again, it guides the judges in making this assessment.

Thus, in the *Gambelli* decision, the Court held that, to the extent that the Italian authorities encourage consumers to gamble in order to fill the treasury's coffers they "cannot rely on public social order relating to the need to reduce gambling opportunities" to justify measures infringing the rules of the internal market, to sustain that such legislation is not consistent.³²⁷ Conversely, in the *Placanica* decision, the Court recognised that an expansion policy that channels gambling activities into controllable systems can be consistent with the objective of combating fraud and crime.³²⁸

- The existence of less restrictive measures

Finally, to meet the test of proportionality, the measures at issue must be the least restrictive to trade. This means that if less draconian measures to achieve the same goal with the same level of protection are available, the contested regulation must be regarded as disproportionate. This criterion, along with the criterion of consistency of legislations, are the criteria that allowed the Court to tighten its control. Thus, in the *Placanica* case, the Court considers the Italian legislation contrary to Article 49 TEC in particular because it prohibits publicly traded companies from bidding to obtain a concession as "there are other ways of monitoring the accounts and activities of operators in the betting and gaming sector which impinge to a lesser extent on the freedom of establishment and the freedom to provide services, one such possibility being the gathering of information on their representatives or their main shareholders."³²⁹

However, ECJ case law on the liberalisation of the gambling and betting sector is much more accommodating in this area than in other economic sectors. The Court recognises a wider leeway for States. This does not mean that restrictive measures adopted by States are not subject to supervision under European Union law. This simply means that the leeway to regulate trade in services is a little wider than in other sectors.

³²⁷ Pt. 69. See also the *Stoß* and *Carmen Media* decisions.

³²⁸ Pt. 55.

³²⁹ Pt. 62.

It is therefore necessary to take into account these constraints in the evaluation of preventive or enforcement measures that can be adopted by States in connection with gambling and betting operators and also in connection with gambling and sporting bets consumers. The principles established by the ECJ immediately affect the 28 Member States. But they are also included in the framework of the European Economic Area. Therefore Ireland, Norway and Liechtenstein are also affected. In addition, the principles of market liberalisation for services can also be translated in the context of bilateral free trade agreements between the EU and third countries. This significantly extends the scope of these disciplines, particularly in light of current negotiations with the United States and Canada.

e. The Regulation of Sporting Bets Linked to the Fight against Sporting Fraud and European Economic Liberties

As it is possible to attempt to anticipate the interactions between sporting rules and European economic liberties, one can also look at how State regulations specifically concerning sports bets enacted to combat corruption may interact with the freedom to provide services.

Among the various measures discussed, one of the most interesting examples is the rule by which many sporting organisations prohibit athletes and their entourage from betting on competitions in their discipline. However, the ECJ has agreed to extend the scope of Treaty provisions on freedom of movement to regulations emanating from non-State entities, such as sports organisations.³³⁰ In addition, it should be recalled that the Court considers that the freedom to provide services includes:

"not only the freedom of a provider to offer and perform services [...], but also the freedom to receive or benefit, as the recipient of the services offered by a provider established in another Member State without being hampered by restrictions. "

Therefore, the ban imposed by sports organisations on certain categories of persons may constitute an infringement to the freedom of consumers to benefit from offered services. However, with regard to the athlete himself as well as his very close entourage, such a prohibition can undoubtedly be covered by the fact that this measure is proportionate. However, *if the circle of persons who may constitute the "environment" of the athlete is not clearly defined, particularly since the notion of insider trading in sports is still unclear, justifying the measure may be less obvious. Therefore, it cannot be excluded that a sports rule of this type can be brought to the attention of the ECJ.*

³³⁰ ECJ, 13 December 1974, case No. C- 36/74, *Walrave and Koch*, pt. 17.

Such a restriction may also be imposed by the State itself. This is particularly what the French State did in the Law of 1 February 2012 aimed at strengthening ethics in sport and athletes' rights. Article 7, which became Article L. 131-16 of the Code of Sport, requires federations to issue rules aimed at prohibiting "stakeholders of sporting competitions":

"from providing sports prognosis services in connection with these competitions when these competition's stakeholders are contractually bound to a sports betting operator holding the authorisation referred to in Article 21 (...) of 12 May 2010 on the opening to competition and to regulation the online gambling sector or when these services are performed in the framework programmes sponsored by such an operator".

Similarly, *if one is consider a ban on risky bets*, that is to say a measure prohibiting betting operators from offering products linked to competitions that may be manipulated, one must be particularly vigilant regarding interactions with the freedom to provide services. Such a measure could render the possibilities to provide betting services random - insofar as the proper progress of a competition can be suspect, at best, a few days before it takes place. *And if the prohibition to offer bets is founded on mere doubts, the principle of proportionality may limit opportunities to intervene.*

Lastly, *many rules aimed at regulating the risk of conflicts of interest still limit the freedom to invest.* For example, devices that prohibit gambling and betting operators from sponsoring certain sporting events in connection to which they offer products. Again, when considered, *these measures must be developed with due regard to the principles of proportionality, necessity and non-discrimination.*

2. Rules Arising from International Economic Law

a. General Presentation of the Multilateral Commercial System

Outside the European context of market liberalisation, one must also take into account the constraints arising from the multilateral trading system and more specifically the World Trade Organisation (WTO) whose rules currently bind 157 States, the European Union, Hong Kong, and Chinese Taipei. Here, only measures adopted by the States themselves can be concerned. Unlike the law of the European Union which can apprehend rules adopted by sports federations, these rules are strictly excluded from the scope of the WTO agreements. That said, the trade in gambling and betting services falls directly within the scope of the General Agreement on Trade in Services (GATS). Indeed, this agreement covers all services (except services supplied in the exercise of governmental authority), which includes gambling and betting services in general, and online gambling and betting services more specifically, and even more specifically sports betting services.

Functioning of the GATS

However, all WTO members are not subject to the same service liberalisation constraints. In the framework of the General Agreement on Trade in Goods (GATT), the parties to the Agreement unconditionally undertake to liberalise trade in goods. Therefore, access to their market is open, although, of course, customs duties may be imposed on incoming goods. Moreover, the parties to the agreement are obliged to comply with two basic principles: first, the principle of non-discrimination between domestic and foreign products or between products, and second, the principle of prohibition of quantitative restrictions.

The situation is different in the GATS as the obligations of the parties are determined by their "specific commitments". In other words, certain obligations under the GATS are triggered when a Member State makes positive commitments. More precisely, for each member of the WTO:

1. A service sector only falls within the scope of the GATS if the Member State agrees to include it on its concessions list. This is referred to as the positive lists or "bottom up" technique. This means that a WTO Member is not required to liberalise services.
2. Once a sector (or subsector) is on a Member State's list, it may decide to impose restrictions on market access for services or service providers

E.g.: Need to obtain a licence

E.g.: Impossibility for foreign investors to hold more than 20% of national companies dealing with water management.

3. Finally, once the terms of market access are determined, the member may still decide that the foreign services or suppliers will not receive the same treatment as services or providers of similar services. This is an exception to the national treatment rule.

In the GATS, liberalisation of services is very progressive and is entirely under the control of the members of the WTO. However, when commitments are made in the context of lists of negotiated concessions, members are required to uphold and consolidate these commitments. In this context, when a member includes gambling and betting activities on its concessions list, among the sectors it agrees to liberalise and when it defines the terms of market access and conditions of treatment of foreign services and service providers, it is required to meet these commitments. Otherwise, the contested measures can be challenged before a specific WTO dispute settlement body.

But the member still has the ability to take certain restrictive measures, as long as they fall under the general exceptions of the GATS.

b. International Trade Law, Liberalisation of Gambling and Betting Services

The WTO multilateral trading system is much less integrated than the European common market. Also, at the multilateral level, it is difficult to identify, as in the European context, legitimate objectives capable of justifying measures restricting trade. However, Article XIV of the GATS contains general exceptions thus formulated:

“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

- a) Necessary to protect public morals or to maintain public order ;(5)
- b) Necessary to protect human, animal or plant life or health;
- c) Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - i) The prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - ii) The protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - iii) Safety;
- d) inconsistent with Article XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective(6) imposition or collection of direct taxes in respect of services or service suppliers of other Members;
- e) Inconsistent with Article II, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.”

This provision allows WTO members to define and implement policies to protect public health, the environment or maintain public order. In this context, a restrictive regulation of gambling services and bets based on the objective of maintaining the integrity of sport and more generally combating fraud and corruption should be justifiable in the context of the protection of public morality and the maintenance of public order. However, like European Union law, WTO law requires that these restrictive measures be applied in a way that does not offend the principles of international trade (non-discrimination and prohibition of protectionism). This latter requirement narrows the scope of the restrictive measures that can be invoked.

The case law of the Dispute Settlement Body (DSB) seems to be even more restrictive than that of the ECJ on this point, especially since the DSB cannot allow itself to go beyond what is expressly provided for in agreements to identify other compelling reasons that might justify restrictive trade measures. Moreover, contrary to the European Union where many initiatives to combat corruption in sports highlight the objective of sports integrity and the means to achieve these objectives, WTO law is totally indifferent to these questions. Therefore, it is certainly more difficult to reconcile the imperatives of trade liberalisation and preserving the integrity of sport in the multilateral trading system than in the European context.

In addition, at an international level, *although rules intended to combat the manipulation of sports bets could without much difficulty be justified temporarily, because they contribute to the pursuit of a legitimate objective within the meaning of Article XIV of the GATS (specifically public order and / or morals), the conditions of application of this measure (conditions of the chapeau of Article XIV) largely restrict the means that States can use in order to meet this goal.*³³¹

c. The United States – Gaming and Betting Services (Antigua and Barbuda v. United States)

The only case in which the DSB has ever addressed, until now, in the field of gambling and betting activities confirms this analysis. This is the U.S. - Gambling and betting services case that pitted the United States and Antigua and Barbuda, which was decided on the merits by the DSB in 2005 (report of the Board of Appeal of 16 February 2005).³³² It later led to developments regarding the process of changing the US regulation so that it complies with WTO law.

The gambling and betting industry plays a vital role in the economy of Antigua and Barbuda. During the 1990s, this activity increased significantly and Antigua sought to develop in particular online gambling and betting services. The United States, for their part and although they have the world's largest market for these games, prohibit online gambling and betting activities, with some exceptions, such as horse racing. In 2003, Antigua lodged a complaint with the DSB against the United States concerning their regulation (at the federal level and at the level of some States), which prohibits the provision of cross-border gambling services, although the United States are committed, under the GATS to liberalise the sector. It may seem surprising that the United States, whose regulation nevertheless reflects the importance of the prohibitionist model in the field of gambling and betting, expressly committed to liberalising this at the multilateral level, since, given the general equilibrium of the agreement on services, they were under no obligation to do so. The inclusion of the gambling and betting industry on the U.S. list of commitments, which has been widely discussed, actually derives from neglect rather than a genuine desire to liberalise the sector. However, the commitment being formally taken, the United States should have been regarded as engaged in this sector. As a defence against allegations made by Antigua, the United States invoked the fact that the restrictions at issue were justified for reasons of public health, public order and public morality. They invoked the general exceptions of Article XIV.

³³¹ This is a constant element in the DSB's case law: whether in the context of the GATT or in the GATS, when a member invokes the general exceptions, the contested measure is almost systematically validated, provisionally, on the basis of Article XIV of the GATS or Article XX of the GATT. However, the test found in the "introductory *chapeau*" is always much more difficult to satisfy and many WTO members are forced to modify the conditions of implementation of their health, environmental or public order policies to comply with their commercial obligations.

³³² United States - Measures Affecting the Cross-Border Supply of Gambling and betting services, WT/DS285/AB/R, 16 February 2005.

The complaint was first considered at “first instance” by a special group which concluded that the U.S. legislation on online gambling and betting activities was compatible with GATS requirements (10 November 2004). On appeal, the Appellate Body upheld in part the findings of the panel regarding three federal laws (report of 7 April 2005): the law on cable communications, the law on movement and the law on illegal gambling prohibiting the provision of remote gambling services constitute restrictions to U.S. commitments under the GATS.

In order to justify such a restriction on the cross-border supply of gambling and betting services, the United States put forward five concerns: 1 organised crime; 2 money laundering; 3 fraud; 4 risks to youth, including the practice of underage gambling; and 5. public health. This last concern was subsequently removed from the U.S. argument. Both the panel and the Appellate Body found that the U.S. measures pursued legitimate objectives under Article XIV a) of the GATS. The objectives invoked by the U.S. were part of the broader categories of public morality and public order.

But in addition to pursuing a legitimate goal within the meaning of the GATS, the measure would still need be necessary for its satisfaction. To operate this necessity test, the DSB applies a proportionality test similar to the one operated by the ECJ which is equivalent to weighing, on the one hand, the relative importance of the interests or values furthered by the challenged measure and their restrictive effect on trade on the other hand. Following this test, the Appellate Body considered the U.S. measure of banning online gambling and betting was a necessary and proportionate measure to the objective pursued.

However, the United States were not able to definitely justify this legislation on the basis of Article XIV to the extent that the Appellate Body considered that it was applied so as to constitute a means of unjustifiable discrimination. The factual element which led the Appellate Body to this finding is of particular interest: the law on interstate horse racing allows bets on horse races between states via telephone and the Internet. The Appellate Body considered it as discriminating between domestic suppliers and foreign suppliers. It is on this basis that the U.S. legislation on gambling and betting activities was considered contrary to WTO law.

This analysis can be compared to the requirement of consistency of a State’s legislation, as used by the ECJ. It should also be noted that the Appellate Body has completely ignored the fact that bets on horse races belong to a very specific area that is fundamentally different from that of bets on other sports: in the first case, horse races are organised precisely in order to develop a market for bets; in the second case, bets on sporting competitions can increase an event’s stakes, but they are not the reason for organising these competitions. Therefore, risks of fraud, corruption and undermining the integrity of sports competitions are not the same in the field of horse racing and in the field of other sports.

In fact, the decisive factor in United States - Gambling was the fact that the law on sporting bets authorises domestic suppliers, but not foreign suppliers, to provide interstate services. There is no doubt that regulating horseracing activities does not justify such discrimination (although the issue should probably be studied in depth). Therefore, the Appellate Body's analysis does not prohibit any online betting regulation that allows online horseracing bets. However, this case shows that the DSB is more reluctant than the ECJ to take into account the specificities of the gambling and betting sector and more specificity in the sector of sports bets. It also shows the fact that the WTO is not as well equipped as the European institutions to take into account all the stakes regarding rules restricting trade motivated by the desire to preserve the integrity of sporting competitions.

Outcome of the Case

The U.S. - Gambling case remains, to this day, unresolved. During the stage of verification of the implementation of the DSB's recommendations, the special group concluded in its report on 30 March 2007 that the United States did not comply with the recommendations and decisions of the DSB. They refused to make any changes to their legislation, continuing to claim that it could be justified in light of the objectives pursued. Even today, the trade war between the United States and Antigua continues. The first threaten to alter their schedules of concessions in order to withdraw their commitments under the GATS regarding the gambling and betting sector (this is, a priori not possible be under the principle of consolidation of the commitments undertaken by members of the WTO).³³³

§ 2. The Different Taxation Models for Bets around the World

Since gross gaming revenue (GGR = bets - gains) is a more relevant indicator than turnover (bets) in the area of sporting bets (it represents the net spendings of bettors), all the data will be expressed in relation to this variable.

It is possible to establish four main types of countries regarding the taxation of sporting bets, while bearing in mind the following definition: legal bet or operator means any betting activity whose type and the operator are allowed in a territory or a specific jurisdiction (e.g. under a licence granted by a regulatory authority or the recognition of a licence granted by the regulatory authority of another country).³³⁴

- **Group 1:** countries where taxes on bets are very low (tax level below 5% of total GGR from bets): these countries are trying to boost the local economy and attract betting operators with a very low taxation level. Among the 30 countries studied in detail, it is possible to cite Alderney, Antigua, Gibraltar, the Isle of Man, Malta and the Cagayan province in the Philippines.

³³³ See [http://www.google.fr/search?hl=fr&source=hp&q=barbade+mesures+paris+États-Unis+OMC&gbv=2&oq=barbade+mesures+paris+États-Unis+OMC&gs_l=heirloom-hp.3...8199.18935.0.19150.38.16.0.14.0.0.2430.2430.9-1.1.0...0...1ac.1.34.heirloom-hp..38.0.0.D_p1ISRxMPA].

³³⁴ This definition is borrowed from the work of the European Council on the manipulation of sports competitions.

Numerous sports betting operators are established in these countries (271 in January 2013) and mostly offer their services in jurisdictions that consider them as illegal operators (since they do not have an explicit authorisation). Australia can also be added to this list, since one of its States (Northern Territory) has adopted a similar policy, which has led to the granting of licences to many operators.³³⁵

- Group 2: countries where taxes on bets are relatively low (between 10 and 20% of the GGR): these are for the most part of countries that have implemented a licencing system (South Africa, Austria, Cyprus, Denmark, Italy, Mexico, the Czech Republic, Russia, the UK, and Nevada). Some of them strictly prohibit online betting activities (South Africa, Russia and the USA) whereas others regulate in the same way all the distribution methods. Even in the largest of these countries (Italy and the UK), revenue for the state and general interest causes coming from bets remain relatively low (less than 200 M€ in all cases).

- Group 3: countries with an intermediary taxation level (between 20 and 50% of the GGR): these countries (Spain, France, Poland, and soon Germany) have chosen to open the sports betting market to competition but currently levy a higher level of taxes. Their decision was motivated by the desire to reduce public (money laundering and manipulation of sporting events) and social risks (addiction to bets) rather than to garner additional income. Indeed, State and/or sport revenue related to bets is low (less than 200 M€ for each country). However, these countries have been criticised by private operators of not allowing them to be profitable enough.

- Group 4: countries with high tax levels (over 50% of the GGR) chose a system of monopolies (Canada, China and Hong Kong, South Korea, Finland, Japan, the Netherlands, Sweden, Switzerland) either at the federal level or at the state level. Income from sporting bets can be particularly substantial (more than 700 M€ in China and Hong Kong) and used to finance causes of general interest.

The data collected (**C** and **D**) show that it is very difficult to completely eliminate illegal bets (**A**) mainly because of the lack of a real correlation between regulation models, taxation and illegal bets (**B**).

A. Difficulty to Completely Eliminate Illegal Bets

Regardless of the regulation model and the level of taxation chosen by a country, it is almost impossible today to eliminate illegal bets.

³³⁵ In Costa Rica, online gambling is prohibited, but operators can establish their servers in this country. Online gambling is therefore a "tolerated" activity insofar as the operator blocks access to his website to all Costa Rican citizens. Consequently, "sports betting licences" do not exist in Costa Rica, and it is very difficult to determine the number of operators established in this country. This number is estimated at several hundreds.

Even in the United Kingdom, several reports (including Gambling Data: European Regulated Markets Online Data Report - 2012) show that some bettors are registered with operators (e.g. registered in Costa Rica), whose licence is not recognised by the regulator (since these countries are not on the United Kingdom's White List – even before the May 2014 reform which abrogated this White List).

Three factors explain this situation:

- Technically, it is difficult to block all illegal payments and illegal financial transactions related to betting sites;
- Numerous countries have yet to precisely define the legal contours of Internet filtering, since this is a recent medium;
- In general, the fight against illegal bets does not constitute a priority for governments, who have different primary concerns such as terrorism.

However, one must admit that all the countries that have taken the measure of the threat of illegal bets achieved significant results. As is the case of anti-doping efforts, it seems illusory to seek perfection. In contrast, prevention vis-à-vis the bettors, the targeting of recalcitrant sites and cooperation with financial institutions can significantly reduce the level of illegal bets.

B. Absence of a Real Correlation between Regulation Models, Taxes and Illegal Bets

Obviously, countries in Group 1 which chose a very limited tax policy on bets generally did not encounter the problem of having an illegal market.

Note, however, that none of them has developed real tools to fight against illegal bets: their priority seems to be to "attract operators" and not to "reject" them. Also note the following paradox: two of these countries - Costa Rica and the Cagayan province in the Philippines – still do not allow operators registered in their territory to offer bets to the citizens of the country concerned. Thus they must also cope with an illegal market that they seem to tolerate while having prohibited it.

The 10 countries from Group 2 (taxes on modest bets) have produced different results. In some of these countries (the UK and Austria) the share of illegal bets remains low (less than 5% of the GGR). Others, however, must deal with a major illicit supply (which represents over 25% of the GGR in Italy, the Czech Republic, Cyprus, and nearly 90% in the USA). Most of these countries are faced with the issue of the development unauthorised outlets or even wild "wild" bookmakers operating in the street. On average, the share of illegal bets represents 24% of this group's GGR.

The small number (three excluding Germany, which had not yet awarded licences in January 2013) of countries in Group 3, with an intermediate taxation level, does not actually allow the establishment of statistics. Nevertheless, it should be noted that Spain and France seem to have, thanks to a regulation deemed to be rigorous, taken the measure of the illegal market. Moreover, the share of illegal bets in this group is lower (14%) than in group 2. Therefore, the argument consisting in demonstrating that a higher level of taxation and restrictions causes an increase in the number of illegal bets is not well founded.

Lastly, in group 4 countries, where the taxation of bets is higher, face a greater illegal supply (between 10 and 60% of the total GGR, and 36% on average). Again, this was primarily due to the fact that most of these countries (except China, South Korea and Switzerland) have not yet taken strong measures to combat unlawful bets.

Type of Country ³³⁶	Illegal Market Share (sports bets – 2011)
Group 1 countries: Alderney, Antigua, Costa Rica, Gibraltar, Isle of Man, Malta, Cagayan (Philippines), Australia	Between 0 and 100 % Group average: non-significant
Group 2 countries: South Africa, Austria, Cyprus, Denmark, Italy, Mexico, Czech Republic, Russia, UK, USA	Between 1,5 and 87 % Group average: 24 %
Group 3 countries: Spain, France, Poland	Between 3 % and 28 % Group average: 14 %
Group 4 countries: Canada, China and Hong Kong, South Korea, Finland, Japan, Netherlands, Sweden, Switzerland, Germany (until 2012)	Between 10 % and 60 % Group average: 36 %

The correlation coefficient between “% illegal bets in the country” and “tax % on legal sports bets in the country” is very low (0.29 for relevant data, that is to say that countries like Alderney, Antigua, Costa Rica, etc. are excluded from the calculation). For the record, only a coefficient greater than 0.70 can indicate the existence of a real relationship between two variables.

³³⁶ See Part 3, Title 1, Chapter 2, Section 2, “National Legislations on Sports Bets”.

In conclusion, it is possible to confirm that efforts put in place to combat illegal gambling (legislation, blocking sites and payments, police actions) constitute the best defence against illegal bets, as opposed to simply taxing betting activities.

Note, however, that some countries (China, the USA, Italy, Eastern Europe) facing an "illegal tradition" that is more developed than elsewhere, must redouble their ingenuity in order to obtain effective results.

C. Taxes on Sporting Bets and Net Spending (GGR) per Inhabitant in 2011

Sporting Bet GGR per Capita	Countries Involved in the Study	Tax level on sporting bets
Under 5 €	South Africa, Germany, Belgium, Canada, China, Costa Rica, Mexico, Netherlands, Philippines, Poland, Russia, Switzerland, USA	Between 12% and 69% of the GGR
Between 7 and 15 €	Australia, Austria, Spain, France	Between 3,5% and 44% of the GGR
Between 18 and 27 €	South Korea, Denmark, Finland, Italy, Czech Republic, Sweden, UK	Between 14% and 78% of the GGR
Above 75 €	Cyprus, Hong Kong	Between 18% and 50% of the GGR

In the group where the net expense of sports bets per capita remains low (less than 5 € per year), one can find countries based on a monopolistic model (Germany, Canada, China, Switzerland) as well as other countries with a lower purchasing power (South Africa, Mexico, Poland, Russia). Finally, there are also countries where bets are illegal on part of the territory (USA) or in the whole country (Costa Rica, Philippines).

The second and third groups (GGR per capita between 7 and 27 €) are composed countries from all parts of the spectrum. There are countries that have opened the betting market to competition (Austria, Spain, France, Italy, the UK, etc.) as well as countries with a powerful state monopoly (Finland, South Korea, Sweden) where people are known to be very fond of sporting bets.

Finally, the net expenditure per capita in the last group (Cyprus, Hong Kong, as well as Greece) is so high (above 75 €) that the possibility of an intervention of exogenous factors such as money laundering, should not be excluded.

In any case, the per capita net expenditure is more related to economic and cultural factors than to the choice of a regulation model or taxation system.

D. Taxes on Sporting Bets and Rates of Return to Bettors on the Legal Market

The level of taxation of sports bets in a country is weakly correlated with the rate of return to bettors: in the 23 usable samples (countries such as Alderney, the Isle of Man, Malta, *etc.* should be excluded), the correlation coefficient amounts to -0.41.

If this ratio was close to -1, or at least inferior to -0.7, one could say that a higher level of taxation is linked to a lower rate of return on the legal market. This is not always the case.

These two counter examples confirm this idea:

- In Hong Kong, the level of taxation of sports bets is high (50% of the GGR) as is the rate of return to bettors (83%);
- In Mexico, the level of taxation of sports bets is moderate (12% of GGR) but the rate of return is not very high (65%).

Conclusion of Section 2

The issue raised in this section was that of the effectiveness of the regulation models of sporting bets.

The discussion above showed that when bets are not prohibited or monopolised, the rules of the European Union and public international law have a significant impact on the models of regulation of the sports betting sector.

By admitting that the taxation of bets is one of the aspects of their regulation, then it must be accepted that the results are not up to expectations sustained by the tax strategy.

Title 2. The Manipulation of Sports Competitions, A Phenomenon with Complex Forms

All the countries in the world and all types of sports are potentially affected by the manipulation of sports competitions. As stated in the preamble of the Convention of the Council of Europe adopted on 9 July 2014 and open for signature at the Macolin meeting on 18 September 2014, by several countries on this subject, this phenomenon is a global threat to the integrity of sport and it calls for an answer that is also global.

In fact, sport is based on the existence of a fair and equitable competition among its participants. Interest in the sports spectacle essentially lies in the uncertainty and unpredictability of the competitions, which implies taking firm and effective action against practices and behaviours contrary to ethics.

Chapter 1. Classification of Cases of Manipulation of Sports Competitions

Behaviours that can constitute a manipulation of a sports competition according to the different applicable rules are extremely numerous. A first attempt to define the main forms of manipulation (**Section 1**) should be followed by a systematic identification of all the imaginable cases of manipulation (**Section 2**).

Section 1. Defining the Manipulation of Sports Competitions

There are currently very few definition of the concept of manipulation of sports competitions, whether proposed by the doctrine or adopted at the international level (§ 1). It is therefore necessary to come up with a more elaborate definition of the concept based, on the one hand, on the possible link between manipulation and sporting bets and, on the other hand, the existence of consideration offered to the sporting participant carrying out the manipulation on the field (§ 2). Indeed, different types of manipulation resulting from the combination of these elements should correspond to different modes of repression: disciplinary and / or criminal depending on the cases (§ 3).

§ 1. Available Definitions

There are different ways to define the manipulation of sports competitions. The terms manipulation, fixed matches, sports fraud, corruption in sport or arrangement are also used interchangeably.

In 2011, *Gorse and Chadwick*³³⁷ seem to have been the first to give a fairly broad definition to the manipulation of sports competitions:

³³⁷ S.GORSE, S.CHADWICK, *Prevalence of Corruption in International Sport, a Statistical Analysis*, Coventry University Business School, 2011.

“any illegal, immoral or unethical activity that attempts to deliberately distort the result of a sporting contest (or any element of it) for the personal material gain of one or more parties involved in that activity.”

In the same year, the Australian Sports Ministry gave a more complete definition through a press release of the Sport and Recreation Ministers' Council:

“Match-fixing involves the manipulation of an outcome or contingency by competitors, teams, sports agents, support staff, referees or officials and venue staff.

Such conduct includes:

- a. The deliberate manipulation of the outcome of a sporting competition or an event during the competition, or a point spread;
- b. An athlete's deliberate underperformance;
- c. Conceding or letting go of an element of the competition;
- d. The wilful disregard by an official of the competition of the competition's rules;
- e. An interference in the game or on the playing surface via the venue staff;
- f. The use of inside information for a bet placed by one of the categories of persons described above or by a gambler who hired someone to manipulate the outcome or a phase of the competition.”

More recently, in January 2014, the Enlarged Partial Agreement on Sport (EPAS, Council of Europe) in turn proposed a definition which seems to suit the public authorities, the sporting movement as well as betting operators. The manipulation of sports competition involves “an arrangement, act or intentional omission aiming to improperly change the result or the progress of a sports competition in order to totally or partially remove the unpredictability of that competition for the unwarranted personal material gain of oneself or others.”

The explanatory report mentions in particular the following.³³⁸

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

³³⁸ Draft explanatory memorandum of the Draft Convention of the Council of Europe against the Manipulation of Sports Competitions, Enlarged Partial Agreement on Sport (EPAS), EPAS (2014), 13rev1, Strasbourg, 5 February 2014, pp. 9-10.

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

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

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

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

55. The objective of such an arrangement, act or omission is to obtain an undue advantage (undue because it arises from an improper arrangement, act or omission) for oneself or for another person: this advantage may take the form of financial gain (for example, a bonus paid to the winner by the competition organiser, a bonus paid to a competitor by their employer, a bribe accepted by a competition stakeholder, winnings from a sports bet placed on the relevant competition or a capital gain realised by the owner of a qualified club who sells their shares), or some other tangible or intangible advantage, such as advancing to a higher level in the competition, or simply the “glory” of winning. The term “undue advantage” therefore does not imply that every manipulation is related to criminal offences such as fraud or corruption.”

§ 2. Suggested Definitions

Given these considerations and because the number of cases of manipulation of sports competitions related to sports bets is constantly increasing, another classification is suggested in which four different categories can be distinguished (A, B, C and D):

	Manipulations without offering consideration to a participant in the competition (1)	Manipulation with the offer of consideration to a participant in the competition (1)
Manipulations unrelated to sports bets	(A) <u>Example</u> : sports arrangement (Match of "shame") ³³⁹ F.R.A./Austria/football/World Cup 1982) ³⁴⁰	(B) <u>Example</u> : corruption by bribes (Marseille/Valenciennes/football/1993)
Manipulations linked to sports bets	(C) <u>Example</u> : (case under investigation – mere suspicions for the time being) Agreement regarding the score at half time (Cesson-Montpellier/handball/2012)	(D) <u>Example</u> : Organised crime and manipulation of matches ³⁴¹ (Calcioscommesse/football/starting in 2009)

³³⁹ This "match of shame" was held in Gijon, Spain, on 25 June 1982. As explained by Albrecht SONNTAG in an article published on 23 June 2014 in: *Le Monde* entitled: "*Mondial 2014: Allemagne – États-Unis, le prochain "match de la honte"*": "The Austrians and Germans, once the score opened by HRUBESCH in favour of the Germans, simply stopped playing after seventy-five minutes. Helpless victims of the masquerade, the Algerian players in the gallery waved money as a sign of disappointment. Never again! It is in this spirit that the German manager Hermann NEUBERGER, who was then Vice President and Head of the Organising Committees of the World Cup at FIFA, imposed, as a result, that the last matches of the group stage should take place simultaneously. Changes were implemented as of the next edition. Nevertheless, the arithmetics of sports rankings still do not rule out the possibility of finding oneself in circumstances that are favourable for certain teams but bad for others. What can, or what should the German and American teams do next Thursday? Attack at any cost, while risking losing their place in the knockout stages due to counter-attacks late in the game? Sports ethics would allow it, while professional opportunism would prohibit it. As Alain CAYZAC wrote in his recent book *Petits ponts et contre-pieds*, players in 1982 committed "a professional faux pas by not taking the context into account". The qualification of manipulation retained for such behaviours could be challenged. In fact, again according to Albrecht SONNTAG, concerning some of the players who participated in this match, "they actually felt that the situation was uncomfortable, but (...) a prior arrangement was not necessary for all the world to bend to "constraints" and demonstrate "professionalism". But according to other sources, after the halftime, German player Paul BREITNER approached the Austrians to ask them not to try to equalise (see "Coupe du monde édition 1982 la honte de Gijon", article published on the website [www.conti-online.com]). Therefore, the pact was concluded after halftime. Some also refer to a "pact of non-aggression". "In our search for categorisation, the existence of an explicit agreement is essential. If the pact is implicit, in the absence of a formal agreement, it is difficult to speak of "manipulation". It should be noted that "manipulation" and "corruption" are two different concepts.

³⁴⁰ During the 2014 world cup in Brazil, the question was raised concerning the repetition of such a scenario at the June 26 match between Germany to the United States. A draw would have allowed both teams to qualify for the knockout stages at the expense of Ghana and Portugal, who competed at the same time. Before the game, several articles discussed this possibility (see aforementioned article of Albrecht SONNTAG).

³⁴¹ Such cases are unfortunately taking place more often recently. For recent examples, see the case of the professional football player sentenced to 30 years in prison by a court in North-Vietnam [http://www.bigstory.ap.org/article/9-footballers-face-match-fixing-trial-vietnam] or the case of the Australian coach, Zia YOUNAN, sentenced to 4 months in prison with reprieve and a fine of 3000 Australian dollars [http://www.theguardian.com/sport/2014/aug/04/football-players-who-botched-match-fixing-result-told-it-was-life-and-death].

(1) In contrast, one understands both direct advantages (in-kind good, money, free services, etc.) and indirect ones (promise to oneself [future contract in a “big” team, possibility of a better remuneration, settle the debt] or to others, [promising a job to a relative, etc.]), thus allowing, on the one hand, the inclusion of both the procurement of a benefit and the saving of money and, on the other hand, both pecuniary and non-pecuniary benefits (in the last case, satisfy a vengeance, a desire to revenge or a success associated, for instance, with patriotism).³⁴² It is interesting to carefully consider the cases where a sports actor is physically or psychologically threatened, or blackmailed, which forces this person manipulates a sports competition. *In concreto*, the actor may be in the position of a person that is not offered an advantage and who simply acts under a threat, or in the position where an advantage was offered initially, and by accepting it, fell under the control of the corruptors. It is possible to place these two cases under the category of “manipulation with an advantage offered to a sporting actor by a third party” by considering that the certainty that the threat will not be carried out equates to the promise of an advantage. In this case, the personal advantage sought may be the protection of physical integrity, peace of mind, non-disclosure of compromising information, etc. However, the possibility of obtaining a gain linked to a sporting bet is not included in the notion of advantage offered by a third party. In fact, in this case, the sports actor could gain a potential advantage from the manipulation for himself, without the involvement of a third party.

After providing a classification **(A)**, we will consider the main risks threatening sports integrity which are linked to sports bets **(B)**.

A. Classification

The identification of these four categories of manipulations of sports competitions is not purely speculative. In fact, it allows, in particular, to determine in which circumstances disciplinary law and criminal law can apply distinctly or together. It is important to distinguish manipulations that are not related to sports bets **(1)** and manipulations linked to sports bets **(2)**.

1. Manipulations unrelated to Sports Bets

There are two possibilities.

(A) The author of the manipulation was not offered any direct or indirect advantage by a third party: these cases clearly stem from a choice made by the sports actor, whether or not he can be punished on the ethical, moral, and/or disciplinary level. At the 2012 London Olympic Games, the Badminton World Federation had disqualified eight players (4 women’s doubles pairs – (1) China, (1) Indonesia and (2) South Korea) accused of “not having made their best efforts to win” group matches. Some considered this sanction as being too severe since the player had acted in this way in order to preserve its chances to win the tournament. Others considered that regardless of the player’s goals, the event was not up to the expectations and that she therefore deserved a disciplinary sanction.

³⁴² For France, see J.-P. VIAL, *Le risque pénal dans le sport*, coll. Lamy Axe Droit, éditions Lamy, 2012.

(B) The author of the manipulation was offered a direct or indirect benefit: the situation involves corruption (active for the perpetrators and passive for persons who accept it or do not report it). Cases in this category are therefore covered by both criminal and disciplinary instances.

2. Manipulations Linked to Sporting Bets

Here again, there are two possibilities:

(C) The author of the manipulation influences the course of the competition in the absence of any advantage offered to him: since it involves personal actions (whether acting alone or with other sports stakeholders, teammates, opponents or referees, for example), this situation constitutes internal fraud. It is generally difficult to suppress under criminal law³⁴³ because it is rarely clearly described in national criminal codes. Moreover, in practice, given the difficulty to prove a manipulation, sanctions under disciplinary law may remain theoretical.

(D) The manipulation simultaneously incorporates elements of corruption, as seen in (B), and sports bets: repression can be envisaged both through the criminal and disciplinary systems. A number of large cases of sports fraud revealed in recent years involving organised crime fall into this category: cases such as "Bochum", "Mr Ye" in Belgium, the "Calcioscommesse"³⁴⁴ etc.

Among the four identified categories, this type of manipulation is obviously the main threat to the integrity of sport since it directly challenges the sovereignty of sports authorities, and even of the States concerned and harms the public order. This is why some countries have specific offences contained in their criminal code, similarly to France (corruption – active or passive – of sporting bets, Articles 445-1-1 and 445-2-1 of the Penal Code), Bulgaria and Spain, in their sports code, as is the case for Cyprus, Poland and Greece or even in their special criminal codes (Italy, Malta and Portugal).

B. Main Risks to Sport Integrity linked to Sporting Bets

Previous developments allow the establishment of an inventory of the main risks to the integrity of sport:

³⁴³ See *infra* Part 3, Title 2, Chapter 1, Section 2.

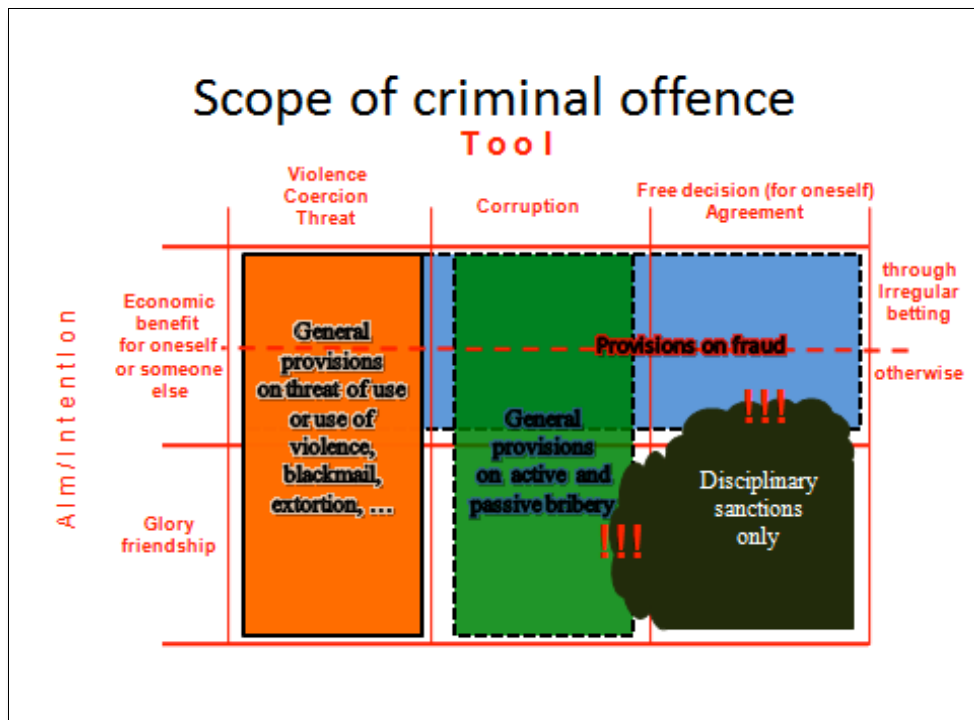
³⁴⁴ See *infra* Part 1, Title 2, Chapter 2, Section 1, B.

Risks	Consequences for Sports Integrity
Very large amounts of illegal bets: more than 80% of bets (several hundreds of billions of Euros)	<ul style="list-style-type: none"> ▪ A significant underground economy ▪ Impossible to detect irregularities linked to illegal bets ▪ Absence of income linked to these illegal bets for States and for sport, with a low risk. ▪ A market (sports bets) that escapes in part from monitoring by States ▪ Sources of fraud and violations of public policy (transnational criminal organisation) ▪ Possible links between organised crime and sports
Particular cases of risks linked to illegal bets in Asia	<ul style="list-style-type: none"> ▪ Tangible examples demonstrating the preceding affirmations with considerable damage for sport (in particular football and cricket): distrust for sports
Interferences between legal and illegal operators	<ul style="list-style-type: none"> ▪ Legal complexity linked to the presence of operators (even listed operators) that are legal in one territory but illegal in another ▪ Interest of partially illegal operators not to promote stricter measures for sport integrity (because they negatively affect their profitability) ▪ Conflicts of interest (these operators sometimes fund professional sports in order to gain in legitimacy)
A very strong increase in live betting: more than 60% of the GGR of the main operators.	<ul style="list-style-type: none"> ▪ Practical difficulties in following the movements of the sports betting market in real time and detect manipulations of events
Rate of return to bettors presenting a strong increase (live betting in particular)	<ul style="list-style-type: none"> ▪ Additional interest for criminals (money laundering through arbitrages allowing to reach a return rate close to 100%)
Countries that try to attract betting operators thanks to motivating taxation regimes and weak monitoring	<ul style="list-style-type: none"> ▪ Sports betting havens create risks for sport (by attracting crime) in the same way that tax havens created risks for the international banking system

§ 3. Methods linked to the Various Types of Manipulation

The following repression methods should correspond to each of the forms of manipulation of sports competitions:

	Manipulation without Consideration Offered to a Sporting Participant by a Third Party	Manipulation with Consideration Offered to a Sporting Participant by a Third Party
Manipulations Unrelated to Sports Bets	(A) Disciplinary law	(B) Criminal law and disciplinary law
Manipulations Involving Sports Bets	(C) Disciplinary law	(D) Criminal law and disciplinary law



Conclusion of Section 1

The first approach gave rise to three main criteria of the definition of the manipulation of sports competitions. Therefore, a systemic census seems appropriate.

Section 2. Proposition for a Systematic Census of Cases of Manipulation of Sports Competitions

This presentation, which does not purport to be exhaustive, enumerates the behaviours which may constitute an offense linked to the manipulation of competitions, particularly in connection with bets. Most of these behaviours are already criminalised - or intended to be under international conventions such as those relating to corruption, for example - by some national laws, or by the disciplinary codes of some international sports organisations.³⁴⁵ The objective of this classification, which is based essentially on substantive law rules, is to clarify the elements of certain offenses in this area.

³⁴⁵ See *infra* Part 3, Title 2, Chapter 1.

The manipulation of sports competitions is perpetrated by competition stakeholders, whether or not with the assistance of third parties. By "competition stakeholders" (see Article 3 § 65 of the EPAS Convention version open to signature on 18 September 2014) one understands all persons, including corporations, that participate either directly (*i.e.* on the ground, including athletes and referees) or indirectly (*e.g.* coaches, caretakers, agents, medical staff and paramedics, club presidents and the clubs or associations themselves) in the manipulation of a sports competition. The Convention draws a distinction among the athletes, their supervisory staff and officials. A "third party" is anyone who is not a competition stakeholder. The term "person" means both competition stakeholders and third parties.

Among the criteria of classification of the various behaviours are: the *actus reus* (the material or objective element of the violation), identifying the perpetrators of the offence, *mens rea* understood in its broad sense (the subjective or psychological element, in other words, other than the intention to commit the crime, the tangible goal pursued by the perpetrator), and lastly, the possible link between these behaviours and sports bets (§ 1 to § 14).

Lastly, above is a table used during the *travaux préparatoires* of the Council of Europe Convention against the Manipulation of Sports Competitions adopted on 9 July 2014 and open to signature during the Maclin Meeting on 18 September 2014. This table also aims to shed light on what can constitute criminal offences.

§ 1. The Manipulation of a Sports Competition by the Actors of the Competition (Sporting Fraud)

"The fact that a competition stakeholder influences (or tries to influence the conduct or outcome of this competition in a manner contrary to sporting ethics and the principles of fair play to gain an advantage, financial or other, for himself or for a third party."

A similar behaviour is subject to disciplinary action under the International Olympic Committee's Ethics Code (2013 edition) which is addressed to the participants in the Olympics, but it is only prohibited "in connection to bets." However, it seems appropriate to establish the manipulation of a competition by competition stakeholders as a disciplinary breach, independently and without any necessary connection with bets or corruption as is required in Article 69 of the FIFA disciplinary Code (2012 version). This approach would allow the apprehension of behaviours motivated by reasons that seem to be more related to sports than to economic profit, in order to preserve the values of sport, in particular its integrity.

Beyond disciplinary sanctions, it seems desirable that this behaviour as well as the attempt to manipulate be established as criminal offenses. Such a specific criminalisation of the manipulation of sports competitions as such, which can be found in a limited number of national laws,³⁴⁶ should be the starting point of any regulation in the fight against this phenomenon. However, there are several differences between the laws which do not all cover the same situations (see report of the B2 group, 3.2). In any case, situations where a manipulation was orchestrated as a result of bribery or coercion and / or in order to bet on the manipulated competition (see below, II-IV), which are the most frequent, constitute aggravating circumstances. Such offenses in any case presume the prior establishment of a manipulation of the competition on the ground.

The criminalised manipulation can be perpetrated by competition stakeholders either directly (*i.e.* on the ground, especially by athletes and referees) or indirectly (coaches, club presidents or the clubs or associations themselves). It is likely that in most cases several competition stakeholders will have directly or indirectly participated in the commission of the manipulation. The extent of involvement should probably have an impact on the severity of the sanctions.

§ 2. Manipulation of a Sports Competition by a Third Party (Particular Cases)

"The fact that a person who is not directly involved in the conduct of the competition materially influences (or tries to) the normal course or outcome of an event in order to obtain an advantage, financial or otherwise."

Such a provision complementing the one applying to the direct or indirect competition stakeholders (see above, I) could first cover the rather rare but possible situations ("floodlight scandal"), where a technician/maintenance officer turns off the stadium lights in order to freeze the score to gain an unfair advantage, financial or otherwise, from a third party (passive corruption) or win money through bets (fraud).

In addition, as stated in general terms, the conduct in question could also be that of any person who obstructs the normal progress of the competition in any other way (*e.g.* fans entering the playing field in order to stop the event, *etc.*). Even motivated by reasons unrelated to an expected gain (for example, because of the concerned person's love for his favourite team), this behaviour should undoubtedly be punished, but with a lighter sanction, such as an administrative sanction in countries where the distinction between criminal and administrative sanctions is made (because this case, it would not be fraud in the usual sense).

³⁴⁶ As is the case, for example, in Article 13 of Greek law No. 4049-2012 of 23 February 2012; for other examples in Europe, see KEA report pp. 33-41 and the Kos report of December 2012, p. 274 and the IOC/UNODC report, p. 248.

§ 3. The Manipulation of a Sports Competition following Active and Passive Acts of Corruption by the Competition's Actors

"The fact that a person (third party or competition stakeholder) promises or gives an undue advantage, financial or otherwise, to an actor in a competition in order to get them to (try to) influence the conduct or outcome this competition "(active bribery).

"The fact that a competition stakeholder solicits or accepts from a third party (or another competition stakeholder), an undue advantage, financial or otherwise, to (attempt) to influence the course or the result of this competition "(passive bribery)."

These behaviours are the most frequent in practice and in principle can be criminally punished under the general provisions on corruption, provided that the national law also punishes private corruption. Although they are often related to sporting bets, they should be punished as such, especially since the conventions on corruption do not seem to be fully applicable to all conceivable scenarios.³⁴⁷ Indeed, one cannot exclude that these offenses are committed with a purpose purely linked to sports, such as the manipulation organised by a club's manager to avoid relegation through acts of active bribery of the opposing team's manager or of the referees.

§ 4. The Manipulation of a Competition following Coercive Acts Targeting the Competition's Actors

"The fact that a person (third party or competition stakeholder) uses threats or violence against an actor in a competition in order to force him to (try to) influence the conduct or outcome of this competition."

The coercion situation differs significantly from that of corruption. Unlike corruption where both the corrupter and the corrupted person should be punished, it does not seem desirable to criminalise the actions of a competition stakeholder which would have directly or indirectly participated in the manipulation of this competition under threat or coercion akin to a *vis compulsiva* (an almost irresistible compulsion, *eine zwingende Gewalt*) and even, of course, concerning a true *vis compulsiva*, and not any random threat or coercion (see *supra* the commentary under the table of classification of manipulations).

§ 5. The Manipulation of a Competition Linked to Bets (Fraud)

"The fact that a competition stakeholder bets (including online) or encourages others to bet on this competition."

"The fact that a person (competition stakeholder or third party) (attempts) influences the conduct or outcome of this competition to benefit financially by placing bets on this competition."

³⁴⁷ On the state of international and transnational rules, see Part 3, Title 3, Chapter 3, Section 1.

"The fact that a person (competition stakeholder or third party) bets (including online) on a competition in connection to which he organised the manipulation (through bribery or coercion) or encourages others to bet on this competition."

"The fact that a person who has not participated in the organisation of the manipulation of a competition, but who is aware of the manipulation, to bet on this competition or encourage others to bet on it."

In all these cases, the purpose of the behaviour is to provide its author, whether directly or indirectly, with a financial advantage through bets, which would probably not have existed in the absence of a manipulation and in the presence of the uncertainty that is usually linked the result of a competition. Therefore, these behaviours constitute a particular type of fraud (against other good faith bettors in particular) and, as such, seem to be apprehended by the relevant national legislations (criminal Codes, *etc.*), but are not always.³⁴⁸ These behaviours seem to also be committed, but indirectly, by the people "encouraged" (part of the entourage of a player for example) to bet on a competition that is manipulated by the principal offender.

In practice, the most frequent case is that where the person who is responsible for the handling, sometimes by means of bribery or coercion, is one that will directly or indirectly bet on competition manipulated. The combination of bribery or coercion for the manipulation and irregular bets should therefore constitute an aggravating circumstance.

Moreover, the first behaviour, usually sanctioned on the disciplinary level³⁴⁹ implies rather than establishes the intent to manipulate, or even the simple existence of a manipulation (the element of knowledge of the manipulation is absent as a condition of existence of the offense unlike in the other situations); however, the theory of appearances, which, when transposed to the honest progress of a sports competition, requires competition stakeholders not only to be honest but also to appear to be honest, justifies prohibiting the direct or indirect competition stakeholders from betting on the competition.

As for the latter behaviour, it can cover all cases where a person is aware of the manipulation without being the perpetrator of this manipulation. This provision, however, is based on the evidence that the person concerned was aware of the manipulation, which can be difficult to establish.

§ 6. Supply of Irregular Sporting Bets

"The fact that a sports betting operator offers (including online) irregular sports bets, *i.e.* when the operator a) is aware of the manipulation of the competition subject to bets; or b) has good reason to believe that the competition in question is most likely manipulated (because of the "suspicious movement" of bets)."

³⁴⁸ See *infra* Part 3, Title 2, Chapter 3.

³⁴⁹ On the state of international and transnational rules, see Part 3, Title 3, Chapter 3, Section 1.

"The fact that a person involved in the management of a betting operator or working for such an operator bets (including online) on competitions on which this operator provides bets."

Irregular bets are those involving a manipulated competition: the manipulation of the competition which underlies these bets makes them irregular, although they are otherwise authorised (and therefore legal). The first behaviour is based on the knowledge of the betting operator of the manipulation, which may, however, involve difficulties of proof. Similarly, the term "*suspicious movement of bets*" should be clarified to prevent a betting operator from being wrongfully accused of a lack of due diligence.

Regarding the staff of betting operators, the proposed provision seeks to preclude a conflict of interest in this area and can in principle be independent from a manipulation. Some instruments specifically prohibit such behaviour.

§ 7. Illegal Sporting Bets

"The fact that a betting operator which is not authorised by the State under whose jurisdiction the consumer is present offers sports bets (including online bets)."

"The fact that a betting operator offers illegal sports bets (including online bets) whose type or terms are not authorised by the State under whose jurisdiction the consumer is present (or participates in the betting activities)."

The supply of illegal sports bets, *i.e.* prohibited or not authorised by the laws of the State in which they are offered should be punished as such, even without the existence of a manipulation of the competition underlying these bets. National practices vary widely on this issue.

§ 8. Divulging and Using Inside Information

"The fact that a person (competition stakeholder or third party) in possession of information on the state of the team or players for example (insider information) discloses this information to obtain a financial or other advantage for himself or for a third party."

"The fact that a person (competition stakeholder or third party) solicits, accepts, or obtains (through bribery or coercion) such information in order to obtain a financial or other advantage for himself or for a third party."

These behaviours generally occur in the context of sports bets. Persons holding such information could indeed decide to bet on a competition or sell this information to other bettors. However, these behaviours should probably be criminalised as such because the disclosure / use of sensitive information may have other objectives than betting gains (for example, when the opposing team adapts its strategy based on this information). In any case, regarding competition stakeholders, disciplinary sanctions are already being considered for the rules of sports organisations.³⁵⁰

³⁵⁰ On the state of international and transnational rules, see Part 3, Title 3, Chapter 3, Section 1.

§ 9. Failure to Inform and/or Report

"The fact that a competition actor does not to inform the competent sports federation of a bribery or coercion attempt on the part of another person (third party or other competition actor) with the goal of manipulating this competition; the fact that the same person does not denounce this attempt directly to the competent public authorities (police, judiciary etc.)."

"The fact that a club or a federation made aware of an attempt to manipulate a sporting event does not denounce the culprits to the public authorities (police, judiciary etc.)."

"The fact that a betting operator does not inform the competent federation or the competent public authorities of suspicious movements of bets."

These behaviours are already "prohibited" under certain aspects, especially by soft law instruments (codes of conduct addressed to athletes and clubs).³⁵¹ However, their criminalisation by State criminal law seems desirable; especially when the failure is belongs to a betting operator or any other person aware of a manipulation attempt. Moreover, the transmission of information concerning a manipulation attempts by competition stakeholders puts the responsibility of the competent authorities (public and private).

§ 10. Active and Passive Corruption of Agents Responsible for Monitoring the Integrity of Sports Competitions

"The fact that a person promises or offers an unfair advantage, financial or otherwise, to any person / authority (private or public) with supervision and control powers / functions (including jurisdictional powers) on the organisation of sports competitions so that the person / authority acts or refrains from acting in the exercise of its powers / functions" (active bribery).

"The fact that a person / authority (private or public) with supervision and control powers / functions (including jurisdictional powers) on the organisation of sports competitions or on the activities of betting operators seeks or accepts an undue advantage, financial or otherwise, for himself or for a third party to act or refrain from acting in the exercise of its powers / duties" (passive bribery).

These behaviours may involve many people, such as national judges who refrain from using their repressive duties in a manner consistent with the law in respect of the authors of the manipulation of a sports competition, or any other person or authority with powers to impose sanctions, including disciplinary sanctions, regarding national and international sports organisations *etc.* However, demonstrating that the competent authorities were corrupted can be a tricky task.

³⁵¹ On the state of international and transnational norms, see Part 3, Title 3, Chapter 3, Section 1.

§ 11. Abuse of Powers

"The fact that a person / authority (private or public) with supervision and control powers / functions (including jurisdictional powers) on the organisation of sports competitions or the activities of betting operators abuses his powers / functions to obtain an undue advantage, financial or otherwise, for himself or for a third party."

The abuse of functions normally only covers public officials (see Article 19 of the UN Convention on Corruption) and not agents or employees of private entities. However, the extension of the concept to the private sector seems necessary to prevent abusive behaviour in this area, given the fact that the abuse of functions cannot be absorbed by the idea of corruption. Thus, abuse of functions in the private sector could cover the actions of a referee hoping to make money by betting on the competition he is involved in and is about to manipulate. In this case, the manipulation is the act of one person and is not related to acts of corruption (the latter involving at least two people).

Moreover, any person with powers of control over the organisation of a competition or the activities of betting operators could also be concerned by this provision.³⁵² It is very likely for members of a regulatory authority for bets that would refrain from exercising their powers of control over an operator who is involved with irregular bets, *etc.* This is less certain for the members of a disciplinary authority that decides not to pursue competition stakeholders who manipulate it in order to preserve the image of the federation because the principle of discretionary prosecution, which comes in play concerning disciplinary procedures, may include protection of the interests of the federation.

§ 12. Active and Passive Influence Peddling

"The fact that a person promises or offers an unfair advantage, financial or otherwise, to another person so that the latter abuses their real or supposed influence to obtain from another person / authority (private or public) vested with supervision and control powers / functions (including jurisdictional powers) on the organisation of sporting events or on the activities of betting operators an unfair advantage for the first person" (the author of active influence peddling).

"The fact that a person soliciting or accepting an undue advantage, financial or otherwise, abuses their real or supposed influence in order to get from another person / authority (private or public) vested with supervision and control powers / functions (including jurisdictional powers) on the organisation of sports competitions an unfair advantage for another person" (the beneficiary of passive influence peddling)."

These are particular offenses whose relevance in manipulating sports competitions is obvious. However, it remains to be seen whether and how the influence peddling is likely to occur in this area, especially since the list of possible perpetrators, seems *a priori* to be open.

³⁵² Even if one were to consider the prosecution of disciplinary breaches as essentially related to the opportunity and that the retained criteria for judging the opportunity of prosecution can be numerous, and understand the interest of the federation.

This provision shall in any case be read in conjunction with those concerning the bribery of officials responsible for monitoring the integrity of sporting competitions or the abuse of powers by the supervisory authorities. Their respective scope should be clarified.

§ 13. Taking Part in an Organised Criminal Group

"The fact that a person systematically and regularly participates in an organised (transnational) criminal group's activities organises manipulations of sports competitions (by means of bribery or coercion) and places bets, directly or indirectly, on these competitions."

The United Nations Convention against Transnational Organised Crime seems in principle applicable to cases where a transnational criminal group is involved in activities of manipulation of sports competitions and irregular bets.³⁵³ However, it is established that the proposed provision also applies to purely domestic criminal groups.

§ 14. Money Laundering

"The fact that a person takes part in money laundering operations through sporting bets (including online bets)."

"The fact that a person takes part in laundering the proceeds of manipulations of sports competitions."

These behaviours appear to be covered by international conventions against corruption and transnational organised crime. Money laundering through sports bets is not always linked to the manipulation of a competition. However, remains true that a criminal organisation that seeks to launder money from illicit activities (e.g. drug trafficking) may want to manipulate a sports competition through bribing athletes or referees for example, in order to bet on the same competition and make additional gains.³⁵⁴ It is also possible that the product of the manipulation of a sports competition will in turn be wagered on a new manipulated competition. The two proposed provisions should cover all these assumptions.

Conclusion of Section 2

This attempt at systematic listing shows, if necessity persists, that in a sector where crime plays an increasingly significant role, it is still imperative that the examples be well distinguished and their constituting elements well grasped, in order to fill potential gaps and deal with the sophistication of criminal practices.

³⁵³ On the state of international and transnational rules, see Part 3, Title 3, Chapter 3, Section 1.

³⁵⁴ On the state of international and transnational rules, see Part 3, Title 3, Chapter 3, Section 1.

Conclusion of Chapter 1

Whether it is a matter of a simple attempt to define the main forms of manipulation or an ambitious endeavour to systematically list all imaginable cases of manipulation, this is an indisputably complex subject.

Indeed, these two attempts allowed us to prove that when confronted with a myriad of envisioned examples, it was important to demand the establishment of a specific criminalisation and to seek the harmonisation of the various legislations.

Chapter 2. Difficulties in Apprehending the Manipulation of Sports Competitions

The previous chapter showed that cases of manipulation of sports competitions, whether or not linked to sports bets can take very different forms, are sometimes carried out using unexpected schemes and involve people from the sports movement that carry out a variety of responsibilities as well as people outside the movement. This diversity makes it more difficult to assess the manipulation of sports competitions, whether by the sporting bodies themselves, as part of their disciplinary authority or by state law in connection with investigations or proceedings brought before them on the basis of the repressive measures of national criminal law, with respect to cases, some of which may involve a highly sophisticated criminal organisation.

A review of numerous disputes concerning the manipulation of sports competitions that were brought or are currently being brought before the disciplinary bodies of sports organisations or state courts allows to highlight the main difficulties that may arise on the occasion of proceedings against persons suspected of being involved in such an undertaking more precisely. The analysis of the case law of the Court of Arbitration for Sport (CAS), which hears appeals against disciplinary sanctions for cases of manipulation of sports competitions that are in constant increase in recent years,³⁵⁵ confirms the recurrence of certain difficulties which may affect devices for combating the manipulation of sports competitions and emphasise the need to strengthen and better coordinate these devices, whether put in place by sports organisations or States.

The following developments will mainly address the following three aspects: difficulties arising from the inadequacy of the applicable law (**Section 1**); difficulties arising from the rules relating to the administration of evidence (**Section 2**); difficulties relating to the relationship between sports disciplinary procedures and legal proceedings before national courts (**Section 3**).

³⁵⁵ While until recently, most of the appeals brought before the CAS were related to disciplinary action taken against athletes found guilty of doping.

Section 1. Difficulties Linked to the Inadequacy of the Applicable Law

Cases of manipulation of sports competitions, whether perpetrated by the athletes themselves, referees, sports club managers or sports organisations officials are first and foremost within the disciplinary power of sports organisations. To cope with the development of these practices, many national and international federations implemented disciplinary regulations that expressly and strongly condemn any behaviour contrary to the sport ethics, including acts aimed at influence the result of a sporting event. Many also impose a ban on their members from betting on products bets linked to the competition in which they are involved or, more generally, bets related to their sport.

But some violations of the competition's may also fall under the internal regulations of the States, either because they are, as such, prohibited by national law (which is uncommon³⁵⁶) or because they involve or result in the commission of acts - corruption, fraud, coercion, money laundering ... - that are criminalised (the vast majority of the domestic laws of States consider these acts as offenses).

Therefore, cases of manipulation of sports competitions seem, *a priori*, to be covered by a tight normative mesh that should not leave room for impunity. However, due to the highly polymorphic nature of these cases and because of repressive measures which are not always clear, and are sometimes inadequate, the applicable law, whether rules enacted by sports organisations (§ 1) or the internal law of States (§ 2), is often insufficient.

§ 1. Filling the Lacunae of Sports Organisations' Disciplinary Law

There is not *one* disciplinary law of sports organisations but as many disciplinary laws as there are sports organisations.³⁵⁷ Sports organisations have a relative³⁵⁸ normative autonomy which allows them to adopt their own disciplinary and ethics rules which vary from one federation to another and from one discipline to another. There is therefore no question of making here a comprehensive review of all disciplinary rules applicable to cases of manipulation of sports competitions in order to assess in each case their efficiency. It is also understood that the failures of the disciplinary law which are highlighted here, in the light of the analysis of some iconic litigation shall not be held as being systematic. However, the examples studied identify some gaps that cannot be identified as an opportunity for effective implementation of disciplinary law.

³⁵⁶ See *infra* Part 2, Title 3, Chapter 3.

³⁵⁷ Although some rules may tend to become standardised, such as in the field of the fight against doping, through the submission of national and international federations to the World Anti-Doping Code of the World Anti-Doping Agency.

³⁵⁸ The adjective "relative" is fundamental here in order to well understand the degree of normative autonomy sports organisations really benefit from. On this question, see *infra* Part, Title 3, Chapter 3.

A. The Lack of Precision in the Definition of Offenses and the Risk of Lack of Legal Basis during the Prosecution

One difficulty may result from the lack of clarity in the definition of offenses to an athlete's disciplinary obligations. In such a case, the risk is that there can be lack of legal basis to prosecute the case and lead to disciplinary proceedings, even if the breach of the integrity of the sporting competition is obvious.

1. The Case of Suspicious Bets in French Handball

The vagueness surrounding the handling of the case of suspicious bets in French handball in 2012 is a perfect illustration of this lack of precision. The contentious bets were taken on the physical network of *Française des Jeux* and concerned the halftime score of the French handball championship game between *Cesson-Rennes Métropole HB* and *Montpellier Agglomération HB* of 12 May 2012. While the Montpellier was already French champion and had only lost one game during the season, the Cesson team was struggling not to be relegated to a lower division. Montpellier was losing at half-time (15-12), and lost the game (31-28). Several Montpellier players, their entourage and others had bet on Montpellier being behind at half-time. Of the eight suspected players, four admitted to betting directly or through an intermediary, while the other four denied doing so, while admitting that their relatives might have been able to do without their knowledge. Five of the suspected players did not take part in the match for various reasons (including injuries).

Disciplinary proceedings were initiated by the presidents of the national handball League (LNH) and the French Handball Federation (FFHB) in November 2012 against the players implicated. In February 2013, the Disciplinary Committee of the LNH sanctioned seven players (Mr Bojinovic, Gajic, Honrubia, N. Karabatic, L. Karabatic, Prost and Tej), inflicting a six game firm suspension with a probationary period of one year. In addition, a financial penalty of € 1,350, attached to each disciplinary suspension, was imposed on the Montpellier club for each proceeding. All the players as well as the club appealed the decision, and the FFHB appeal jury decided:

1. To revoke the penalties for the players who continued to deny having bet on the game (Mr Gajic, N. Karabatic and Tej), considering that a doubt remained as to the facts alleged against them;

2. To add a reprieve for two of the six suspension meetings affecting the four players who admitted to betting directly or through an intermediary on the outcome of a game played by their own team by retaining the concept of "first fault" in the Regulation;

3. To revoke the penalties imposed on the club, since the charges against the players could not be analysed as having a direct or indirect relationship with the object, organisation or operation of the club.³⁵⁹

One of the main difficulties affecting the continuation of the disciplinary proceedings is that the basis of the prosecution was not perfectly clear. The general Rules of the LNH and FFHB contain a specific provision on sports bets. However, at the time of the facts, it was possible to consider that it only applied to online bets. This provision implemented Article L. 131-16 of the Sports Code, as amended by Law No. 2010-476 of 12 May 2010 concerning the opening to competition of online gambling, which provides that sports federations must enact "rules aimed at prohibiting the stakeholders of sports competitions [...] from engaging, directly or through an intermediary, in betting activities concerning the competition in which they are participating". But the transposition operated by the handball federations was clearly marked by the context of the adoption of the law, since Article 84 of the Regulation made many allusions to online bets. § 3 thus provided that "stakeholders of a sports competition organised or authorised by the LNH or FFHB cannot engage, in relation with said competition, directly or through an intermediary, in betting activities within the meaning of Article 10-3 of Law No. 2010-476 of 12 May 2010 concerning the opening to competition and to regulation of the online gambling sector, because of their direct or indirect participation, or any kind of link with this sporting event." This ban concerns the categories of competitions organised or authorised by the FFHB and the LNH and that ARJEL defined as capable of supporting the organisation of online sports bets (FFHB Yearbook, 2012-2013). However, Annex 7 of the disciplinary rules relating to disciplinary sanctions provided for the punishment of "sports bets" without any specification (case 13).

Therefore there was an ambiguity as to the possibility of punishing players who place bets on the competition in the physical network. It has since been lifted since references to online bets disappeared from Article 84 of the FFHB Rules.³⁶⁰

However, this example serves to emphasise the fact that, in some cases, the disciplinary regulations of sport organisations may leave open some holes that represent some of the shortcomings in the sporting law enforcement system, either because they are insufficiently precise or because they provide, as in this case, the offenses that are too detailed.

2. The Appeals Made before the CAS

It appears from the review of the decisions rendered under auspices of the CAS that this situation is not unique, since the normative reforms led by sports organisations are not nearly as fast as the development of practices aimed at circumventing the rules of sports ethics.

³⁵⁹ Press release, 29 March 2012.

³⁶⁰ FFHB Yearbook, 2013-2014.

However, since sports organisations have inserted in their general rules or their disciplinary rules provisions condemning, in general, behaviours contrary to sports ethics, it is not unreasonable to suggest that most schemes of manipulation of sporting events can be condemned on this basis. This is what emerges from the *FK Pobeda Aleksandar Zabrcanec, Nikolce Zdraverski v. UEFA* award issued on 15 April 2010.

In this case, in the first round of qualifications for the 2004/2005 Champions League, there were rumours about some performances of the *Macedonian club FK Pobeda*. UEFA commissioned an expert in order to examine the bets made on suspicious matches. The expert report issued in March 2009 confirmed the existence of abnormal bets (one of the games in question had attracted ten times the amount of bets than was expected for such a meeting). Disciplinary proceedings were thus initiated against the club, its president, Aleksandar Zabrcanec and the team captain, Nikolce Zdarverski. In support of the expert report on sports bets, several testimonies of anonymous witnesses established that one of the games was rigged. After the procedure, the FK Pobeda club was banned from participating in any UEFA competition for a period of 8 years. As to Mr Zabrcanec and Mr Zdarverski, they were permanently banned from carrying out any football-related activity. Before the CAS arbitral body, the applicants challenged the legality of these sanctions and in particular raised the fact that no provision of applicable law, either in the statutes of UEFA or the disciplinary rules in force at the time, specifically targets match rigging.³⁶¹ However, the CAS ruled that the conduct in question could be sanctioned on the basis of Article 52 of the UEFA Statutes³⁶² and Article 5 of the Disciplinary Regulations³⁶³ aimed at unsporting conduct in general. The arbitral panel noted that:

“No provision in the UEFA 2004 Statutes and 2004 DR refers specifically to “match fixing”. Still, the Panel is convinced that match fixing touches at the very essence of the principle of loyalty, integrity and sportsmanship because it has an unsporting impact on the result of the game by inducing players not to perform according to their real sporting capacities and because they get rewarded for their misconduct. Match fixing is cheating and constitutes a clear violation of the basic principles under which sporting competitions shall be carried out.”

“Although match fixing and betting activities were specifically implemented as examples of a breach of the principles established under article 5 DR only in the 2008 edition of the Disciplinary Regulations, the Panel has no doubt that already before, match fixing activities always constituted a breach of the principles of loyalty, integrity and sportsmanship and thus, violated also the 2004 version of article 5 DR.”

³⁶¹ Article 5 *bis*, which specifically concerns the integrity of matches and competitions, was added to the UEFA disciplinary regulations in 2008.

³⁶² “Disciplinary measures may be imposed for unsportsmanlike conduct, violations of the Laws of the Game, and contravention of UEFA’s Statutes, regulations, decisions and directives as shall be in force from time to time”.

³⁶³ “Unsporting conduct, breaches of the Laws of the Game, as well as infringements of UEFA’s Statutes, regulations, decisions and directives, are penalized by means of disciplinary measures (...) Disciplinary measures provided for may be taken against members associations, clubs and individuals for offences before, during or after the match”.

In addition, having erected the principle of integrity of sports competitions as a general principle of sports law, it is possible to consider that the CAS has helped to strengthen the repressive apparatus for sports at the transnational level since this principle can be interpreted as prohibiting conduct contrary to sports ethics and fair play.³⁶⁴ However, it is possible to consider that if the CAS was able to sanction the integrity breaches, it is because the Disciplinary Regulation of UEFA already contained, when the events took place, a “catch all” rule expressly punishing the violation of the loyalty obligation, *etc.* In the absence of such a rule, the CAS would unequivocally have confirmed the sanctions imposed by sports disciplinary bodies. Therefore, it seems difficult to say that the CAS would have imposed a rule applying to all sports, even in the absence of general or special provisions in the rules of the sports in question.

*In addition, it is important to address the issue of the lack of clarity in the definition of the sanctions and their severity that arises in connection with a breach of the integrity of sports competitions which can only be interpreted widely.*³⁶⁵ But it is true that this second problem can also occur in the presence of offenses established with more precision by sporting regulations.

B. The Lack of Precision in the Definition of the Sanctions and their Severity Threshold

The issue of the gravity and proportionality of the sanctions adopted against athletes convinced of having participated in a manipulation of sports competitions scheme is central to the disciplinary proceedings. In most appeals brought before the CAS, the question is raised, even if it is rare for an arbitral panel to conclude that there is a lack of proportionality between the punishment and the seriousness of the offense.³⁶⁶ The issue is also recurrent at the disciplinary proceedings stage, either because the maximum penalties prescribed by the sports organisations seem excessive, or because they seem to be too lenient. Thus, in the case of suspicious bets in French handball, the maximum penalty prescribed by the FFHB regulations that is incurred for violating the rule prohibiting players from betting on the competition was, at the time of facts, a suspension for six matches.³⁶⁷ This maximum penalty could *in concreto* appear as being insufficient and holding little deterring³⁶⁸ power when, for example, those involved in the competition place bets against their own team. Since then, the regulations were amended to provide for a maximum penalty of a two-year suspension.³⁶⁹

³⁶⁴ See *infra* Part 3, Title 3, Chapter 3, Section 2, “The Common Principles Applicable to all Stakeholders”.

³⁶⁵ On the issue of knowing whether this goes against the principle of the legality of sanctions and sentences, see *infra* Part 3, Title 3, Chapter 3, Section 2, “The Common Principles Applicable to all Stakeholders”.

³⁶⁶ This issue is thoroughly analysed within the framework of the necessary conciliation of disciplinary sporting rules with the fundamental human rights guarantees. See *infra* Part 3, Title 2, Chapter 1, and Title 3, Section 2.

³⁶⁷ Annex of Article 22.7 of the Federal Disciplinary Rules.

³⁶⁸ Provided that the maximum sanctions stipulated by the rules never be considered as excessive; what could be seen as excessive, however, is the unfair imposition of a maximum sanction on a certain case.

³⁶⁹ 2013-2014 FFHB Handbook.

1. The Football Match-Fixing Scandal in Greece

In other cases, the broad discretion given to the disciplinary sports bodies for determining the most appropriate sanction may lead to situations where, for the same facts, the sanctions imposed by the different competent authorities have no common measure of severity. In addition, the disciplinary process may be circumvented due to the intervention of other sports authorities. The scandal involving the manipulation of football matches during the period 2008-2011 in Greece is a perfect example of such a case.

The scandal erupted in June 2011 following investigations by UEFA and the establishment by the European Federation, of a blacklist of suspicious matches, many of which took place in the Greek championships. UEFA had informed the EPO (the Hellenic football federation) in the fall of 2009 about suspicious matches in Greece and provided it with the list, but it took about two years for the list to be made public by a Greek parliamentarian. The blacklist included 27 suspicious matches, including two in the Super League (League 1), 3 in the Greek Cup, and 22 in Football 2 (League 2). UEFA classified the matches in the following categories "highly corrupted", "corrupted", "seriously suspicious", "suspicious" and "slightly suspicious". The publication of the blacklist led the Greek Supreme Court (Arios Pagos) to request the opening of an investigation in April 2010 and based on the results of this investigation criminal proceedings were initiated in June 2011.³⁷⁰

These developments triggered the start of disciplinary procedures. In fact, the disciplinary committee of the Super League (Ligue 1) decided on 28 July 2011, to relegate two teams, because of their involvement in match fixing activities according UEFA's blacklist, in the Football League (League 2): *Olympiakos Volou* and *Kavala*. The same committee also imposed fines on both teams (300,000 euros each) on their respective owners (90,000 euros each) and condemned them to a lifetime ban from any football-related activity and a lifetime ban from stadiums. These sanctions were based on Articles 21 A and 21 B of the EPO Disciplinary Code providing respectively the offenses of active and passive bribery and manipulation of the outcome of a competition.

The decisions of the disciplinary commission provoked a strong reaction from the representatives of both convicted teams who argued that, *inter alia* the commission should have waited until the end of criminal proceedings before applying such grave disciplinary sanctions. An appeal was filed and the Super League's appeal board cancelled, in August 2011, the relegation penalty and instead imposed on the two teams the removal of points for the next championship.³⁷¹ However, the sanctions against the owners of the two teams were upheld.

³⁷⁰ See *infra* for criminal cases.

³⁷¹ 10 points from *Olympiakos Volou* and 8 points from *Kavala*. It should also be noted that because of its implication in cases of match fixing, the UEFA decided, on 11 August 2011, to exclude *Olympiakos Volou* for three years from European competitions.

Following revelations about the involvement of other teams in cases of manipulation of football matches, the EPO started new disciplinary proceedings against, among others, three teams Super League teams. In September 2011, the EPO's Disciplinary Commission, while acquitting the other two teams, *OFI* and *PAS Giannina*, decided to relegate the *Asteras Tripolis* club in League 2 and impose on it a fine of 300,000 euros. Its president was also fined 30,000 euros and given a 3-year ban from any football-related activity, for acts of active bribery. However, in October 2011, the Super League's appeals committee reversed the Disciplinary Committee's decision as a whole, considering that the allegations had not been proven.

Beyond the differences in the penalties imposed by the two competent authorities of the EPO - the Disciplinary Committee and the Appeal Committee - the most interesting element in the Greek disciplinary matters is that the decision of the Super League's appeals committee did not ultimately prevent the relegation of *Olympiakos Volou* and *Kavala* for a different reason. The commission of professional sports, an independent authority established by Law No. 2725/1999 which is competent to issue licences to teams ("Certificates") allowing them to participate in professional football leagues, decided, also in August 2011, to refuse to issue such a licence to the two teams involved which were therefore automatically relegated to league 4, an amateur league. The reason for the decision was that the two teams could not get a licence to participate to the extent that their owners had been excluded for life, from the football world by the disciplinary authorities of the EPO. The fact that these persons continued to own and control teams, *i.e.* since no change of ownership had been made, justified the fact that their teams were not granted a licence for participation in professional leagues. The Commission on professional sports, on the basis of the disciplinary sanctions taken against the owners of the teams involved, indirectly circumvented the decision of the EPO's appeals committee which had not upheld the relegation of teams themselves as a disciplinary sanction for acts of manipulation of football matches. However, it should be noted that under Article 77 § 3 of the 2725/1999 law, the Commission of professional sports must refuse to issue a licence to participation in the case of a finding of serious violations of this law (which covers the offence of manipulation of sports competitions).³⁷² Therefore, one may wonder whether this authority could rely, without awaiting the outcome of criminal proceedings, on the mere finding by the authorities of the EPO, of a violation of the disciplinary code by the owners of the teams concerned in order to refuse to grant them a licence to participate. In any case, the decision of the Commission seems to have been appealed before the *Conseil d'État*, but to date, no decision was rendered.

³⁷² See Part 2, Title 3, Chapter 2, Section 2, "The Repercussion of the International Agenda on National Agendas", and for a global view, Part 3, Title 1, Chapter 2, Section 1, "The National Legislations on Sporting Bets".

The indirect intervention of the Commission on professional sports, a non-judicial authority, in the disciplinary process initiated by the competent authorities of the EPO (Disciplinary Committee and Appeals Commission) therefore raises the issue of the coordination between the actions of various sports authorities, and between disciplinary sanctions imposed on the teams and those imposed on the individuals who are managing them. The Greek example can be used to emphasise the random nature of disciplinary procedures whose legitimacy is therefore questionable.³⁷³

2. The *Calcioscommesse* Scandal in Italy

One of today's greatest scandals in the world of football, the case *Calcioscommesse* in Italy, also helps to illustrate this type of difficulty. The case began in June 2011 following investigations by the prosecutor of Cremona in the context of the investigation known as "Last Bet".

The investigation covers dozens of meetings and about twenty clubs from four main Italian leagues (Series A, Series B, the *Lega Pro* (professional league) and the *Lega Nazionale Dilettanti* (amateurs)). It is difficult to know exactly the number of matches that are being investigated, but without a doubt, the number is significant (tens). There are many manipulation techniques: poisoning players to alter their physical condition and performance, or simply players deciding to not properly play the game. The second hypothesis, which is widespread, has one of the essential difficulties in investigations since it is necessary to prove that the suspected player did not properly play the game.

The discovery of the case, whose transnational scale was clearly established, led to the opening of many proceedings before the Italian courts which are still pending. Many disciplinary proceedings were also initiated which are generally presented as six separate "veins" (Cremona 1, 2 Cremona, Cremona 3 and Bari, Naples, Bari 2, Cremona 4). The disciplinary authority before which these cases were brought is as follows: the trial judge is the National Disciplinary Commission of the Italian Football Federation (FIGC); the appellate court is the Federal Court of Justice of the FIGC; Finally it is possible to make a last resort appeal before the National Arbitration Court for Sport (TNAs), during which the case can be retried in its entirety. It is not a "cassation" in the strict sense, even if the Italian commentators speak here of "Cassazione".

³⁷³ The issue of the transnational harmonisation of sanctions incurred in case of participation in a scheme of manipulation of sports competitions therefore arises as it was also previously raised in the context of the fight against doping (the problem was only partially resolved with the adoption of the World Anti-Doping Code). On this subject, see *infra* Part 3, Title 3, Chapter 2, Section 1, § 2, A, 1, b, ii.

Each procedure led to several disciplinary proceedings, most of which resulted in an appeal procedure or a *cassation* procedure. A few cases, however, were settled amicably (*patteggiamento*: negotiated sentence) as provided for in Articles 23 and 24 of the Code of Sports Justice. However, some defendants have publicly regretted having offered to negotiate, not only because it created a presumption of guilt (this was particularly true of the Juventus coach Antonio Conte³⁷⁴) but also because they were eventually sentenced to heavier penalties than those decided at the end of the disciplinary proceedings. This can be explained by a lack of a proper investigation that often fails to gather enough evidence to establish disciplinary violations. This example illustrates, once again, the random nature of the sanctions imposed in cases of manipulation of sports competitions.

Regarding the many disciplinary decisions handed down, an analysis of the actual convictions shows that there is a limited number of cases where the decisions of the trial judges were completely overturned on appeal or before the TNAS.³⁷⁵ However, some high-profile cases, such as the one concerning Nicola Ventola, first sentenced for a suspension of 3 years and 6 months before having it totally cancelled in April 2013, or the emblematic case of Antonio Conte, first excluded for 10 months and then only 2 months by the TNAS, have resulted in some confusion among the public, especially since the sporting justice worked with remarkable speed in this case and in many others.

The speed of certain convictions that were ultimately cancelled casts doubt on the legitimacy of the action of the sports justice. Naturally, in these cases, people who had their penalties cancelled or significantly reduced, used all possible means of communication to discredit the work of the trial judges and the sports prosecutor. The media coverage of these cases also significantly contributed to blurring the image of the Italian sports justice.

3. The Case of Fixed Pakistani Cricket Matches

Difficulties related to the fact that it is particularly hard to identify the suitable penalty both in terms of the seriousness of the offense and in terms of the specific circumstances affecting each person involved, especially when the applicable law is not clear enough, have been highlighted in the *Butt, Asif* and *Amir* case regarding Pakistani cricket.

³⁷⁴ [<http://www.gazzetta.it/Calcio/Squadre/Juventus/20-08-2012/conte-ho-fatto-solo-errore-sbagliato-voler-patteggiare-912316264578.shtml>].

³⁷⁵ For an updated tracking of the numerous sporting lawsuits, see: [http://it.wikipedia.org/wiki/Scandalo_italiano_del_calcioscommesse_del_2011]. However, to our knowledge, there is no official database listing all the convictions. The TNAS final awards are listed on the Italian National Olympic Committee's website: [<http://www.coni.it/attivita-istituzionali/tribunale-nazionale-di-arbitrato-per-lo-sport/arbitrati.html>].

The facts of this highly publicised scandal are: on 29 August 2010, Pakistani cricket players Salman Butt, Mohammad Asif and Mohammad Amir were reported by the British newspaper News of the World (NoTW) as having participated in the manipulation of two test matches between Pakistan and England, played in London from 18 to 21 August 2010 (Oval test Match) and from 26 to 29 August 2010 (Lords test Match). All three players were paid to throw “no balls” at specific times of the games, following the instructions of their manager, Mr Mazhar Majeed, the latter having himself received bribes from a man having identified himself as being the intermediary of some bettors, but who was actually an undercover reporter working for NoTW.

Following the publication of this information by NoTW, supported by several recordings of telephone conversations between the journalist and the athletes’ manager, both disciplinary and criminal sanctions were decided. Following disciplinary proceedings, on 2 September 2010, the International Cricket Council (International Cricket Federation) ordered the immediate suspension of the three players, on the basis of Article 2.1 of the ICC Anti-corruption code which aims to prohibit corruption and the manipulation of sports competitions.³⁷⁶ On 5 February 2011, the ICC anti-corruption Tribunal ruled on the appeal made by the three Pakistani players and imposed for different periods for each of the players involved in the case. This decision was then appealed by the lawyers of players Butt and Asif before the CAS. The two appeals were heard separately, but by the same arbitral tribunal. This tribunal rendered two awards on 17 April 2013, in which it decided to confirm the sanctions imposed by the ICC against Butt and Asif.³⁷⁷

The ICC anti-corruption code provides, as a sanction for the manipulation of sports competitions, ineligibility for a period ranging between 5 years and a lifetime ban. According to the code, the period of ineligibility should be determined on the basis of two criteria: the seriousness of the offense regarding the fundamental general requirements and the possible presence of aggravating and/or mitigating circumstances. The 5-year minimum period of ineligibility might seem excessive and not allowing for a modulation of the penalty according to the specific circumstances of each case. The ICC anti-corruption Tribunal has also emphasised the irreversible effect of such a penalty, as follows:

“A five year ban already results in heavy denunciation for the players and sends out an unmistakable warning or deterrent to others who might be tempted to engage in corrupt practices. The playing lifetime of cricketers is limited, in particular for fast bowlers. It is difficult for cricketers to recover from long lay-offs. To keep their competitive edge, they need constantly not only to be physically fit, but also to be mentally attuned to dealing with the rigours of the game and changes in the way it is played.

³⁷⁶ “2.1.1 Fixing or contriving in any way or otherwise influencing improperly, or being a party to any effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any other aspect of any International Match or ICC Event.

2.2.2 Seeking, accepting, offering or agreeing to accept any bribe or other Reward to fix or to contrive in any way or otherwise to influence improperly the result, progress, conduct or any other aspect of any International Match or ICC Event.”

³⁷⁷ CAS 2011/A/2362 *Mohammad Asif v. International Cricket Council* and CAS 2011/A/2364 *Salman Butt v. International Cricket Council*.

The impact of a prolonged ban on a player is magnified by the fact that cricketing skills are not easily transferable to other forms of employment. The ineligibility will inevitably produce a massive depletion of income from potentially lucrative employment and endorsements [...] to deprive a cricketer of the chance to perform for five years is to prevent that person from expressing his or her unique talents in a very special way. Particularly for players who have overcome considerable social disadvantage because they have in a dedicated way nursed their cricketing artistry, the result can be devastating.³⁷⁸

However, the Court had no choice but to comply with this provision. The minimum sentence was imposed on Mr Amir, who, partly because of his young age which made him more vulnerable and easily influenced, benefited from certain extenuating circumstances. However, Mr Butt, being the team captain, having responsibilities as the team's leader and being more experienced³⁷⁹, was subjected to a period of 10 years with the possibility of suspending 5 years of the sentence on the conditions that he shall not violate in the future, any provision of the ICC anti-corruption code and that he participates in a training program organised under the authority of the Pakistan Cricket Board. Mr Asif was sentenced to a period of ineligibility of seven years with the possibility of suspension of 2 years under the same conditions as those imposed on Mr Butt. Therefore, in the end, assuming that Mr Butt and Mr Asif comply with the conditions relating to the suspension of a portion of their sentence – the conditions cannot in any way be considered as being too restrictive – the three players were sentenced to the same penalty. This could also be seen as a sign that the court considered that the five-year ineligibility period should be the maximum penalty, in particular with regard to the duration of the careers of high-level athletes. In any case, the tribunal specifically criticised the excessive rigidity of applicable rules and even questioned the relevance of the minimum penalties, suggesting a revision of the part of the anti-corruption Code dealing with sanctions:

“Nonetheless, informed as we are by our diverse judicial experience, we would suggest that part of the Code relating to sanctions, might usefully have injected into it a measure of flexibility. Continuity and consistency are important legal values, but minimum sentences always pose problems for judges who wish to tailor penalties to a range of diverse facts, not all of which can have been envisaged by the legislative body: hypothetical examples where a minimum 5 year ban would be palpably unfair can be easily suggested. An ability to suspend or part suspend a ban would allow greater play to a Tribunal's sense of what is fair and reasonable in special circumstances. Alternatively, the ICC itself might be accorded the power to refer a case on the Tribunal to consider the lifting of a ban, if, since its imposition, circumstances had changed in a material way.”³⁸⁰

³⁷⁸ *Idem*, § 215, pp. 75-76.

³⁷⁹ “Overall we conclude that Mr Butt's offence is more serious than that of his team mates. In his favour is his conspicuously good record and capacity for sportsman-like behaviour. He has distinctive leadership capacities, and it would be a loss to both Pakistani and world cricket if he were lost to the game altogether. At the same time, captains have a crucial role to play for good or for evil in relation to corruption. He is relatively young, had not been captain for long, allowed himself to be swept along by Majeed's avuncular bonhomie and promises of cornucopia. In Mr Butt's case, therefore the minimum penalty of suspension for five years alone would not be appropriate. We consider that a further five years suspended on condition, *inter alia*, that he participates, starting as soon as possible, in programmes of public education and rehabilitation under the auspices of the PCB is here warranted.”

³⁸⁰ *Idem*, § 242, p. 90.

The risk to the excessive rigidity of the rules relating to disciplinary sanctions is that they do not allow a sufficient modulation of the sentence, with regard to the circumstances of each case, which goes against the principle of individualisation of sanctions and sentences.

However, the imposition of a minimum threshold need not be prohibited. This measure is in fact common, both in civil and criminal law. It highlights the seriousness of the offenses in question. And conversely, as was previously pointed out, too much discretion left to the disciplinary bodies may lead to the adoption of sanctions incommensurate with the seriousness of the infringement.

For its part, the CAS arbitration tribunal emphasised, in the Butt case, that the disciplinary rules of the ICC anti-corruption Code, in particular, lacked clarity.³⁸¹ The applicant challenged, *inter alia*, the rationality of the sanction that was imposed because the ICC Code provided for a heavier sanction in case of "spot fixing" than for cases of "match fixing", especially since the former are regarded as less serious than the latter.³⁸² This analysis was not enough to successfully challenge the contested sanction,³⁸³ but it is clear that ICC framework would gain legitimacy and effectiveness if a comprehensive reform would be envisaged. Other sports organisations are in a similar situation where their disciplinary regulations provide for penalties whose extreme rigidity or inconsistency could also be discussed.

§ 2. The Exposure of Insufficiencies in Internal Law Repressive Instruments

Regarding U.S. domestic law, difficulties in dealing with the manipulation of sports competitions can be just as great, although of a different nature. It is quite easy to understand that the generally applicable repressive measures, which do not specifically criminalise sporting offenses, may be unsuitable for cases of manipulation of sports competitions. But the laws specifically repressing sporting offenses are not free from criticism.

A. The Weaknesses of Legislative Devices Specifically Criminalising Sports Offenses

Few states have legislations specifically criminalising such offences.³⁸⁴ Yet the existence of such legislations obviously facilitates dealing with the manipulation of sports competitions. In any case, this can be presumed even if some recent cases display the flaws of some of these devices.

³⁸¹ § 68 of the award.

³⁸² Articles 2.1.1 and 2.2.3 of the ICC Code.

³⁸³ The CAS tribunal held that only a high level of irrationality could constitute grounds for contesting a sanction ((§ 62 of the award).

³⁸⁴ For the latest laws on this subject, see Part 2, Title 3, Chapter 2, Section 2, "The Repercussion of the International Agenda on the National Agendas, and, for a global view, Part 3, Title 1, Chapter 2, Section 1, "National Legislations on Sporting Bets".

1. The Affair of Suspicious Bets in French Handball and French Criminal Law

Again, the case of suspicious bets in French handball is relevant here, if only to show that the legislation specifically applicable to sports offenses was not adequate.

In French criminal law, the manipulation of sports competitions linked to bets can indeed fall under several offenses. It can be indirectly dealt with when the financial movements in question are likely to enter the qualification of money laundering (Article 324-1 of the penal code).³⁸⁵ It can also be covered through a new specific offense of active or passive bribery of a sporting competition stakeholder established by Article 9 of Law No. 2012-158 of 1 February 2012 aimed at strengthening sports ethics and the rights of athletes. Articles 445-1-1 and 445-2-1 of the Penal Code included in the aforementioned law state that "the penalties provided for in Article 445-1 [corruption of persons not exercising a public function] shall apply to any person who promises or offers to a stakeholder of a competition – whether or not giving rise to bets – without right, at any time, directly or indirectly, presents, gifts or any benefits for himself [herself] or for others, so that the competition stakeholder modifies, by an act or abstention, the normal and fair conduct of the event."

Previously, the manipulation of sports competitions was likely to be dealt with through the offense of bribery of persons not exercising a public function. This offense only covered persons who "exercise in the context of a professional or social activity, management duties or work for a natural or legal person or any organisation" (Article 445 – 1 of the Penal Code) and it would likely cover corruption cases involving professional stakeholders³⁸⁶ of a sporting event but it is not certain that it also covers amateur stakeholders.³⁸⁷

The new offence only covers events giving rise to sports bets³⁸⁸ but concerns "any stakeholder" of these competitions without further precision, which suggests that the legislators intended to include "all stakeholders in the sports chain with the capacity to influence the sporting event."³⁸⁹ However this involves the existence of an outside actor who attempts to influence the stakeholders of the competition. In fact, in the case of suspicious bets in handball, the absence of such an outsider led the investigator to focus on the qualification of fraud.

³⁸⁵ J.-F. VILOTTE, *Préserver l'intégrité et la sincérité des compétitions sportives face au développement des paris sportifs en ligne*, report dated 17 March 2011, § 165; Ministry of Sports, No. DS/DSB1/2013/76, 28 February 2013 relating to the fight against illegal sports bets, p. 31.

³⁸⁶ See Douai Court of Appeals, 28 November 1995, convicting the president of Olympique de Marseille for active corruption of employees (article 152-6 of the Labour Code).

³⁸⁷ *Id.*

³⁸⁸ The Vilotte report suggested covering all competitions, the fact that a competition gives rise to bets was seen as an aggravating circumstance or as an element favouring detection.

³⁸⁹ P. BELLOIR, *op. cit.*; the Vilotte report proposed a list of examples (not exhaustive) of these actors: "For the purposes of the preceding paragraph, competition stakeholders are organisers, coaches, athletes regardless of the legal nature of their relationship with the organisers, sports officials, referees, managers of national or international sports federations or sports associations and generally any person whose functions allow them to influence the course of a competition or sporting event."

The French criminal system is far from being comprehensive since it does not consider the case of manipulation of sports competitions without the intervention of a third person who is the instigator of the corruption.

In addition, as will be demonstrated by the following developments, the use of violations of general criminal law may in itself not be appropriate, especially in view of the difficulty of gathering evidence establishing the manipulation scheme.

2. The *Calcioscommesse* Scandal and Italian Criminal law

Italian criminal law specifically criminalises sporting fraud with the Law of 13 December 1989, No. 401.³⁹⁰ Although the definition used is very wide, it only applies to cases where the manipulation of a match was instigated by a person outside the sporting world. As in the case of French law, the Italian criminal law does not concern situations of manipulation where no act of corruption was committed. Therefore, the law primarily focuses on the "corruptor" from outside the sporting world. This person can be found guilty of fraud even though their proposal was not accepted and fraud does not occur. But when the law on sports fraud does not apply, the crime of fraud or swindle (in Italian, *truffa*) found under section 640 of the Criminal Code may also apply,³⁹¹ and this indicates the fact that Italian criminal law seems extremely successful and is expected to effectively combat the manipulation of sports competitions.

However, in the presence of such a sprawling affair that is the *Calcioscommesse* case, it could also turn out to be insufficient. Moreover, many difficulties involved in the gathering of evidence and use thereof in the context of disciplinary proceedings as well as court proceedings have emerged.³⁹² In fact, the criminal justice system seems to be struggling with the complex and international networks involved in manipulation schemes. The risk of stagnation is underlined by the judicial authorities themselves. There is, in particular, a disproportion between the means available to criminal networks and the investigative resources mobilised, which raises fears of having to choose between one of two paths, which are both unsatisfactory: either focusing the legal action on some secondary characters who are easily punishable, or try to reach the heart of the conspiracies, with the obvious risk of stagnation.

³⁹⁰ Article 1 para. 1 provides that "whoever offers or promises to provide money or any other benefit to a participant in a sports competition organised by federations recognised by the CONI or UNIRE (equestrian sports), or any other sports organisation recognised by the State and the member associations, in order to achieve a different result from that which would have been obtained following the proper conduct of the competition, or perform any other form of fraud in order to achieve such a result, shall be punished by imprisonment of one month to one year and a fine between 500,000 Lire and 2,000,000 Lire." (Translation by Sorbonne-ICSS Research Programme).

³⁹¹ For a more detailed presentation of the Italian criminal law see *infra* Part 3, Title 1, Chapter 3, Section 1, § 2.

³⁹² See *supra* Part 1, Title 2, Chapter 2, Section 1, § 1, B, 2.

It is also important to emphasise the different levels of intervention of the criminal networks. Indeed, the *Calcioscommesse* case reveals a strong imbrication between small local networks of criminals and transnational networks that are probably larger. Naturally, concerning investigation and enforcement resources, it is particularly difficult to reconcile these two levels of intervention. However, Italy has significant experience in this field, since this case contains elements that can be found in mafia cases. Thus, over the last 30 years, Italy has put in place various specific institutional and normative devices to combat the Mafia (especially the famous "anti-mafia" judges, who are ad hoc judges and whose work is fully dedicated to cases involving the mafia and usually have specific powers and prerogatives). Naturally, these methods can only be used in the context of the fight against fixed bets if there is a possibility that criminal networks are involved.

Another limitation, which is probably more important, is obviously related to internationalisation. In this regard, the parallel drawn with cases involving the mafia is again relevant. Thus, faced with the internationalisation of the mafia phenomenon, Italy gradually entered into agreements with various States. It is clear that cooperation with the authorities of other Member States of the European Union or the United States could work effectively, but it obviously becomes more complex when it comes to intervening in poorly governed territories (e.g. Albania) or with States that do not consider police cooperation and the fight against the mafia as a priority. It goes without saying that these facts did not escape the various criminal networks which are naturally present in these States, out of the reach of transnational action. This is even more problematic when the behaviours of certain actors abroad do not constitute illegal behaviour as such under the law applicable in the territory. The fight therefore becomes particularly uneven.

Finally, it seems that any attempt to establish sports fraud as a specific criminal offense is bound to face some complex shortcomings: the law focuses on the issue of sport corruption - and this seems obvious with regard to the criminal nature of this offense - and the law excludes many other sports offenses that do not involve corruption (this is also valid for fraud and duress); the law provides a broad definition to the offense of sporting fraud and may remain insufficient to deal with the whole scheme of manipulation when it involves extremely complex and organised transnational crime networks.

A final example will suffice to make this point: the Greek criminal legislation.

3. Greek Law and the Scandal of Fixed Matches

Law No. 2725-1999 published in the Official Journal on 17 June 1999 and which focuses on the regulation of amateur and professional sports, attempted, for the first time, to combat the phenomenon of match-fixing. Article 132, entitled "Active and passive corruption made with the aim to manipulate" covered the manipulation of the outcome of a sporting event in any collective or individual sport.

This law, which is no longer in force, was applicable to all sports, was broad and covered athletes, referees, club officials and any other person linked to these persons. It criminalised acts of bribery and corruption aimed at manipulating the outcome of a sporting event to the benefit or detriment of any club or association (§ § 1 and 2 respectively). The manipulation of the outcome itself was not sanctioned. Yet, the law established a link between the occurrence of a manipulation, the result and imposing heavier penalties (§ 3). Indeed, if the corruption produced profits, the sentences imposed at least 3 years in prison and fines of 2 million drachmas. This meant that the attempt to manipulate a sports competition through acts of bribery and corruption alone was sanctioned by § § 1 and 2, the occurrence of a manipulation constituting a cause of aggravation of criminal responsibility in accordance in § 3.

It is on the basis of this Law and the other relevant provisions of the Greek Penal Law (money laundering, illegal and irregular bets, fraud, *etc.*) that proceedings were initiated.³⁹³ If this is the case, one might wonder why the proceedings were not initiated on the basis of the 1999 law. The absence of a publication of the judgments rendered on 5 December 2013 (see below) makes it all the more difficult to search for the exact legal basis of the criminal prosecution.

In any case, based on the results of the initial investigation, prosecutors filed suits against 85 people and issued arrest warrants against some of them in June 2011. Four people were placed in provisional custody, including three direct or indirect owners of the teams that were involved in match fixing, and a person who managed an irregular bets office. During the investigative phase, the judges followed a mass strategy and summoned, for each suspicious match recorded on UEFA's blacklist, all the members of the boards of the potentially implicated teams. However, by examining meetings having taken place before or after the suspicious matches, they extended their investigation to events other than those reported by UEFA. The number of people suspected of involvement, in one way or another, in the manipulation of football matches in Greece thus amounted to several dozen (about 200 people).

It is clear that regarding this scandal, having one criminal procedure was impossible. Therefore, the Greek authorities had to prepare for a succession of trials on various charges. The first trial, which was truncated from the rest of the case, began in September 2013 and involved 11 people, including presidents and owners of clubs and certain betting operators. The very short limitation period for certain offenses was also likely to inevitably reduce the number of defendants, which explains that the judicial authorities had spared no effort to expedite the trial of the first case, especially since the one of the main defendants, Mr Psomiades, in custody since April 2012, was to be released after 18 months in accordance with Greek legislation (late October 2013).

³⁹³ See however, N. PETROPOULOS, R. MEGUIRE, "Match Fixing: Case Studies from Greece and Ireland", in: M.R. HABERFEL, D. SHEEHAN, *Match-Fixing in International Sports, Existing Processes, Law Enforcement, and Prevention Strategies*, Springer, 2013, pp. 89-99, p. 93 who affirm that the prosecution was started on the basis of the general criminal law.

The charges, depending on the case and the defendant, included many offences such as:

- the establishment and management of an organised criminal group;
- participation in the activities of an organised criminal group;
- acts of active and passive bribery with a view to manipulating matches;
- acts of coercion with a view to manipulating matches;
- Instigating the commission of fraudulent acts and the commission of such acts;
- attempted fraud;
- irregular placement of bets and incitement to the commission of this offense;
- Laundering the proceeds of the crimes.

After two and a half months of hearings, sometimes marked by intractable difficulties in terms of evidence,³⁹⁴ the first judgments were rendered on 5 December 2013. Of the 11 defendants, only 5 were sentenced, and the other six were acquitted having been accorded the benefit of the doubt. In particular, the court sentenced these five persons for acts of bribery and corruption (especially implicating club presidents) for manipulating 6 football matches. One defendant was also convicted of coercion, while another was convicted of participating in irregular bets in connection with one of the arranged events. The court imposed rather lenient prison sentences (ranging from 2 to 4 and a half years) and monetary penalties (ranging from 30,000 to 40,000 euros). In addition, the execution of the prison sentences is also suspended until the judgment is rendered on appeal, and the offenders were therefore released. However, and this may be less striking than it appears given the difficulties concerning evidence, the court acquitted the defendants for acts of establishment, management and participation in an organised criminal group and money laundering. The text of the judgment not being available, however, it is currently impossible to access the court's reasoning and the basis for its decision.

What is particularly problematic is that the court, on the day on which it pronounced its judgment, rejected the prosecutor's request to be sent the files of this first case to be used for opening an investigation to determine if players could also incur criminal liability for the 6 games that the court had established as being fixed. This rejection could be explained by the fact that, in the court's opinion, no player would be willing to testify. But the prosecutor has recently submitted to the Director of the Public Prosecutions office a new application with the same object, with particular emphasis on the need to investigate the possible criminal liability of the players of the losing teams in the 6 matches that were fixed. In fact, according to the prosecutor, it may well be that the losing team organised the manipulation on its own, that is to say without the knowledge of its opponent. However, the prospect of initiating criminal proceedings against the players (including for passive corruption) who participated in these matches, appears very uncertain, knowing also that the players were not even investigated on the disciplinary level.

³⁹⁴ See *infra* Section 2, § 2, A of this Chapter.

This first case, calling for an urgent settlement, certainly does not solve the problem. In addition to the fact that it is necessary to await the judgment on appeal, it is clear that as the investigations progress; many other cases will be opened depending on the severity of the offences, once the state of the investigations will allow hearing all the cases arising out of the Greek scandals on the merits. For example, several individuals (neither players nor club managers) are currently being investigated in Thessaloniki for fraud and laundering the proceeds of criminal activity. These individuals were accused of being aware of the manipulation of a Greek Cup competition which is also blacklisted by UEFA and thus had won considerable sums by betting on this event. It should however be noted that the other two competitions on which they had also bet considerable sums were not on the UEFA blacklist.

Lastly, it is precisely because the occurrence of this scandal highlighted the fact that the previous repressive system was not sufficient to stem the phenomenon of manipulation of football matches that the Greek Parliament recently decided to strengthen the applicable body of law with the adoption of Law No. 4049-2012 published in the Official Journal on 23 February 2012 which covers the "criminal repression of match-fixing."³⁹⁵

B. Limits of Dealing with the Manipulation of Sports Competitions through General Criminal Law

It is not uncommon that the manipulation of sports competitions, especially when related to sporting bets, takes place against a backdrop of corruption, fraud or coercion. With regard to good-faith bettors that were deceived because they bet on the outcome of a game relying on the uncertainty inherent in any sporting event even though the result was a foregone conclusion, the manipulation can even be described as fraud, swindle or "cheating" (English law qualification). However, it would be wrong to think that the law applicable to these offenses, when sufficiently developed, always constitutes a mesh that is tight enough to capture all cases of manipulation.

Several recent studies on this subject, under the law of the Member States of the European Union³⁹⁶ and at the international level,³⁹⁷ suggest many gaps in these devices even though they draw relatively optimistic conclusions on the adequacy of the repressive devices of the States that have not adopted laws specifically criminalising fraud or corruption in sport.

³⁹⁵ For a detailed presentation of this new device, see Part 2, Title 3, Chapter 2, Section 2, "Repercussions of the International Agenda on National Agendas".

³⁹⁶ KEA, *Match-fixing in sport. A mapping of criminal law provisions in EU*, 27 March 2012.

³⁹⁷ D. KOS, *Global Criminalisation of Match-Fixing. Comparative Study on Applicability of Criminal Law Provisions Concerning Match-Fixing and Illegal/Irregular Betting*, December 2012.

1. The Manipulations of Football Matches in Germany (1970-1971)

These deficiencies also appear in the light of the review of certain precedents before State courts, where the judges, through a dynamic interpretation of the applicable law, attempted to adapt the application of the existing standards so that they can be applied to the facts constitutive of manipulation of sports competitions. This was particularly the case with regard to the application of certain provisions of the Penal Code in Germany.

At issue here was the first known case of manipulation of football matches in Germany that involved fifty-two players, two coaches, six managers and two clubs. These persons were sanctioned by the German Football Federation (DFB) for manipulating several games in the 1970-1971 season in the *Bundesliga*. The manipulations were organised in a way as to avoid the relegation of the sanctioned clubs.

In the criminal proceedings, a lack of evidence of harm, which is necessary to establish the offense of fraud as provided by the German Penal Code (section 263), led to the acquittal of the defendants by the German Federal Court. However, the German courts changed their position since. In 2006, the Federal Court upheld a fraud conviction rendered by the District Court of Berlin against Robert Hoyzer (the accomplice of Ante Sapina in the manipulation of football matches in the "Bochum case"), recognising the financial losses suffered by the German Football Federation and the loss of public confidence in the integrity of sport as sufficient damages to make a finding of fraud.³⁹⁸

2. The Manipulation of Football Matches in China (2000-2001)

A similar situation took place in China, where, following the controversial application of certain criminal laws, State courts were forced to reconsider their interpretation of legal norms in such a way as to complete the characterisation of acts which formed the basis for the prosecution of those responsible of sports corruption.

Gong Jianping was the first referee in China to be investigated for corruption as defined in Article 385 of the Chinese Criminal Code. It was proven that Mr Gong had received bribes in 2000 and 2001 in order to influence the results of Super League football matches. However, the offense with which Mr Gong was charged and for which he was later sentenced to 10 years and 6 months of imprisonment, was hotly debated because this offense can only be committed by a public officer.

³⁹⁸ T. FELTES, "Match-fixing in Western Europe", in: M.R. HABERFELD, D. SHEEHAN, *Match-fixing in International Sports, Existing Processes, Law Enforcement and Prevention strategies*, Springer, 2013, pp. 20-21.

Some commentators pointed out that even if it can be said that the Chinese Football Association (CFA) was charged with a quasi-administrative function and that it led public service activities in connection with the administration of football, referees only have a contractual relationship with this body. This relationship serves as the basis of the powers that referees hold during games, without, however, granting them functions in connection with the administration of football. For this reason, according to this opinion, the referees could not be considered as officials or as providing a public service activity. This would prevent them from being charged with the commission of the offense of public corruption.³⁹⁹

According to the proponents of the opposite view, supported by the prosecution and followed by the judge in the Gong case, the powers exercised by the referees are directly conferred to them by the CFA. The referees would therefore be considered as representatives of the Federation in connection with the administration, organisation and imposition of sanctions during games. In doing so, they participate in a public activity and could therefore be regarded as officials of the Chinese State.⁴⁰⁰ Consequently, they could be tried and sentenced as directly responsible of the crime of public corruption.

Although this position led to the conviction of Mr Gong, uncertainty regarding the legal basis used in this case influenced the subsequent change in direction. In 2012, the referees investigated in cases of manipulation were indeed charged on the basis of Article 163 and not on the basis of Article 385 of the Criminal Code. This new legal basis, inserted in the chapter on crimes jeopardising the maintenance of order in the socialist market economy, applies to acts of corruption committed by individuals who were in the service of a company and provides a legal basis whose application to acts of corruption in sport seems to be more appropriate.

Conclusion of Section 1

The general criminal offences that can cover certain cases of manipulation of sports competitions are thus, in many cases, insufficient to capture all scenarios. The general offense of bribery, often linked to business and to the intervention of a third party, is a perfect illustration of this shortcoming. But it is often after their own repressive device shows its weaknesses, following a match-fixing scandal, that States become aware of the need to modify their instruments for combating corruption and fraud in sports.

³⁹⁹ 王作富, 田宏杰 [Wang Zuofu and Tian Hongjie], 《“黑哨”行为不能以犯罪论处》 [“Black Whistle” Conduct Cannot be Punished under Criminal Law], 中国政法大学学报 (2002) 20(3) *Journal of China University of Political Science and Law* 162, 163.

⁴⁰⁰ 曲新久 [Qu Xinjiu], 《“黑哨”行为已构成受贿罪》 [‘Black Whistle’ Activity Constitutes the Crime of Accepting Bribes], 中国政法大学学报 [(2002) 20(3) *Journal of China University of Political Science and Law* 159, 160; See also 李诚顺 [Li Chengshun], 《龚建平“黑哨”案一审判决定罪问题评析》 [An Analysis of the Conviction of Gong Jianping ‘Black Whistle’ Case], 潍坊学院学报 (2003)3(3) *Journal of Weifang University* 35, 36-7.

Section 2. The Difficulties Related to Rules on the Taking of Evidence

After the difficulties in dealing with cases of manipulation of sports competitions in the context of a particular law enforcement system, a review of the practice sheds light on another type of obstacles, which is at the heart of the complexity of the fight against this phenomenon: the taking of evidence.

A project or attempt to manipulate sports competitions is, by nature extremely difficult to prove. Because in most cases the scheme involves the fact of an athlete losing the game by not doing his best or by committing more mistakes than usual, or for a referee to interfere with the course of the sporting event by paying more or less attention to certain facts of the game, it is often even impossible to effectively prove a manipulation as such. Only the occurrence of events extraneous to the fixed match – suspicion of abnormal bets, the interception of a conversation or even unexplained money deposits - can truly jeopardise the situation of those responsible.

In addition to these difficulties relating to the relevance and strength of the evidence, there are those arising from stringency of the rules on the taking and administering of evidence. They are found both in the context of disciplinary proceedings (§ 1) and in the context of proceedings before State courts (§ 2).

§ 1. Difficulties Encountered in Sports Disciplinary Procedures

In the disciplinary proceedings against athletes suspected of interfering with the normal conduct of a sporting competition, two questions come up regularly, and the CAS is often faced with these issues in the appeals procedures: the first relates to the legality of the evidence that may be produced before the disciplinary authorities and, possibly before the arbitral tribunals charged with assessing the legality of the decisions of the former; the second concerns the standard of proof that must be observed in the context of disciplinary proceedings and this involves questions about the degree of certainty of the occurrence of the offense that should be established in order to determine the existence of this offense. These issues are often addressed through the analogy that can be made with criminal proceedings and the rules of evidence that are used, and that are often more stringent than the ones used in disciplinary proceedings. These questions concern, more precisely the conformity of the rules with the essential procedural safeguards that should govern the conduct of any decision-making process can lead to the punishment of a person. They are widely discussed in the section of this report on the "Common Principles to be Respected by all Players."⁴⁰¹

⁴⁰¹ *Infra*, Part 1, Title 3, Chapter 3, Section 2.

Other difficulties also occur from the fact that sports organisations only have limited means of investigation and few ways to obtain the production of the evidence sought. Thus, it is not rare that the evidence used in disciplinary proceedings are produced and provided by State jurisdictions. However, this leads to the assumption that disciplinary and judicial proceedings are initiated simultaneously, which is not always the case. Moreover, even where cooperation can take place between the sporting authorities and state authorities, it is most often on an informal basis and without any guarantee that things will necessarily be facilitated.

A. Suspicious Bets in French Handball

The case of suspicious bets in French handball showed how this lack of resources can be problematic. Disciplinary bodies do not possess the same means of investigation that may be available to magistrates. In the case in question, they were not able to call anyone other than those suspected of betting on their own game, who were already deposed in the context of the criminal proceedings because of their involvement in the case (the companions of the players in particular), since their power did not extend to federation licence holders. However, it is conceivable that they can access elements of the criminal files, on the one hand, because the Federation and the League were acting as civil parties in the criminal aspect of the case, and on the other hand, because procedural decisions were taken by the investigating chamber of the *Cour d'appel de Montpellier* while disciplinary proceedings were pending. It seems however that although the Disciplinary Committee was able to rely on the decisions of the investigating chamber, it did not have access to the investigation file itself,⁴⁰² probably in order to preserve the secrecy of this procedure.

Conversely, the existence of the criminal proceedings may hinder the cooperation of the players with the disciplinary authorities. Thus, several players refused to cooperate with them, claiming to reserve their statements for the judge's appreciation.⁴⁰³ One might think that this time it is the prospect of a possible cooperation between disciplinary proceedings and criminal proceedings that hampered the investigations.

This example also serves to highlight that the effectiveness of sports disciplinary procedures is actually highly dependent on the pooling of means of detection and the means of collecting evidence of all stakeholders in the fight against the manipulation of sports but that such cooperation will remain random if it is not formally institutionalised. In this case, the manipulation was detected by the betting operator, *La Française des Jeux* and it seems that disciplinary proceedings benefited from the information collected by the betting operator during the investigation. If that is indeed the case, this cooperation once again seems to have been established on an informal basis.

⁴⁰² *L'Équipe*, 30 January 2013.

⁴⁰³ *Id.*

The French regulations organise, since the Law of 1 February 2012, cooperation between sports institutions and ARJEL, the former being allowed to access information held by the latter in order to determine whether stakeholders of the competition placed bets on a competition in which they were involved.⁴⁰⁴ These provisions, however, were not applicable in this case since the bets in question were taken on the physical network. In addition, the regulations implementing this legislative device have not yet been adopted, particularly with regard to the difficulties involved in reconciling the possibility of sharing information with the rules on the protection of personal data.⁴⁰⁵ In any case, assuming that such a device can be effectively implemented in France, it is not certain that it can be generalised.

It may also be noted that the facts were revealed by the detection system of *La Française des Jeux*, which revealed abnormalities in the taking of bets on the game. The amount (global and unitary), frequency (rapid acceleration the morning of the match), location (outlets precisely located in Rennes, Montpellier and Paris) and the type of bets (the score at half-time) which led the operator to suspend bets on the morning of the meeting and to alert the central department of races and games at the Ministry of the Interior.⁴⁰⁶ It is then the central department of races and games at the Ministry of the Interior that led the investigation, the bets having been taken on the physical network.

During the disciplinary proceedings, the Disciplinary Committee and later the Appeal Panel relied on a 70-page report prepared by three investigators and upon hearing the players involved. This investigative report was prepared on the basis of the testimony of the players involved as well as other persons (the *L'Équipe* newspaper dated 30 January 2013 cites the club physiotherapist, the agent of N. Karabatic and another player), which matched the facts made public by the press (or supplied by FDJ). It seems that the players were not very talkative during their audition.⁴⁰⁷

⁴⁰⁴ Article L. 113-16-1 of the Sports Code: "Access a sports federation, for the purpose of initiating disciplinary proceedings against a stakeholder of a sporting competition on which he placed bets, to personal information relating to betting operations recorded by an online gambling or betting operator holding the approval required under Article 21 of law No. 2010-476 of 12 May 2010 above is done by application to the regulatory Authority of online games. The Regulatory Authority of online games communicates to agents of the federation that are specially authorised for that purpose under the conditions set by decree, information that is strictly necessary, in compliance with Law No. 78-17 of 6 January 1978 relating to data, files and freedoms."

⁴⁰⁵ It has been emphasised that the main difficulties would pertain to determining the specific conditions of the exchange, G. LEBON, "Ethics and sports bets: a winning combination?" *Cahiers du droit du sport*, 2012, pp. 63-64. In the meantime, ARJEL has already seised the League of professional football in the case of a player who offered tips on the site of an operator, which led to his suspension for three months by the disciplinary Commission of the League of professional football, decision of 14 March 2013, "*Jérôme ROTHEN*", available at [<http://www.lfp.fr/corporate/article/les-decisions-du-14-Mars-2013.htm>].

⁴⁰⁶ However, some evidence suggests that *La Française des Jeux* had also received evidence pointing in the same direction. This is what the lawyer of some players said. See the French newspaper *L'Équipe* of 19 March 2013.

⁴⁰⁷ *L'Équipe*, 30 January 2013.

It is clear that the elements of the misconduct are much less complex than those of the corresponding criminal offenses⁴⁰⁸ since it suffices to establish that the competition stakeholders placed bets on this competition, whether directly or through an intermediary. It is not necessary to also establish that they manipulated the competition. However, the disciplinary authorities struggled to prove that such bets were made. The appeals jury held that it was not possible to establish this fact for players who continued to deny the accusations. The identification of bettors does not seem to have caused any major problems.⁴⁰⁹ But the difficulty to demonstrate that those who made the bet did so on behalf of a player in the competition subsists. In this case, the proximity between the players and the people who bet (their respective companions) did not seem sufficient to establish the action for the account.

B. The Case of Fixed Football Matches for the 2010 World Cup Selection

FIFA has encountered similar problems when, at the request of the South African Football Association (SAFA), agents of the international federation visited South Africa in March 2012 to inquire about possible manipulations that may have affected some friendly matches in preparation for the 2010 FIFA world Cup.⁴¹⁰

The suspicions originated from some controversial decisions by referees during matches, as well as agreement between SAFA and an organisation called "Football 4U." Under this agreement, Soccer 4U, an organisation managed by Wilson Raj Perumal,⁴¹¹ was to provide, as part of an exchange program, referees for some friendly matches. The agreement would allow the SAFA to save on travel expenses and accommodation for the referees, these expenses being covered by Football 4U. In addition to constituting a violation of FIFA rules, the participation of referees chosen by an organisation outside the South African federation in international matches undoubtedly enabled Football 4U to manipulate the results and the progress of these games.

⁴⁰⁸ See *infra* Part 3, Title 2, "Instruments of Repression".

⁴⁰⁹ This seems to have been established thanks to testimonies. Pursuant to Article L. 561-13 of the Monetary and Financial Code, the operator is required to obtain the identity of the punter starting from a certain level of gain (5,000 euros for a game receipt), an obligation which can however be circumvented by making several identical bets.

⁴¹⁰ The initial request of the SAFA concerned three games, but the FIFA investigators extended their investigation to seven games: South Africa 4 - 0 Thailand (16 May 2010), South Africa 1 - 1 Bulgaria (24 May 2010), South Africa 2 - Colombia 1 (27 May 2010), South Africa 5 - Guatemala 1 (31 May 2010), South Africa 1 - Denmark 0 (5 June 2010), Nigeria 3 - 1 Korea (6 June 2010) and Japan 0 - 0 Zimbabwe (10 June 2010).

⁴¹¹ In February 2011, Wilson PERUMAL RAJ was arrested in Finland and accused managing and organisation dedicated to the manipulation of football matches. This organisation belonged to Dan Tan SEET ENG and was controlled by an Asian organisation dedicated to illegal bets. Raj Perumal is now a protected witness in Hungary. See [<http://www.smh.com.au/sport/soccer/matchfixing-mastermind-wilson-perumal-may-still-be-in-contact-with-players-and-football-officials-20130916-2ttmu.html>].

During their stay in South Africa, Chris Eaton, director of security of FIFA, and Terry Steans, independent investigator, interviewed several members of the SAFA and analysed the documents the interviewees submitted to them. The investigators requested access to the electronic mailboxes assigned by the federation to its officers, with the intention of finding out the exact terms of the communications maintained between them and representatives of Football 4U, and thus determine the degree of involvement of the former in the manipulations carried out by the referees chosen by Football 4U for these games.

After having analysed the content of the messages provided by the technical staff of the SAFA, the FIFA investigators realised that there were significant gaps in the messages provided. They could not do anything to force the suspected officials to unveil the contents of their personal mail boxes, nor were they able to obtain all the documents necessary to conduct a thorough investigation. Despite their insistence, the investigators did not have sufficient means to obtain evidence that could have demonstrated unequivocally that the agents of the SAFA were aware of fraudulent intentions of the representatives of Football 4U. Therefore, they had to rely on inferences made from the elements at their disposal:

“Of the serving and former SAFA staff members we interviewed, none admitted to being involved in match fixing or being corrupted by Wilson PERUMAL RAJ and his associates. Nevertheless, there is persuasive circumstantial evidence and, when combined with the ‘ordinary man’ test of behaviour, this inevitably leads to the conclusion that several SAFA employees were complicit in a criminal conspiracy to manipulate these matches.”⁴¹²

In order to determine whether the manipulations had actually occurred, the investigators asked the SAFA staff to contact, through their respective federations, the referees who participated in the suspicious matches in order to have them come to Africa South for questioning. The requests addressed to the federations were sent two days after investigators arrived in South Africa. For this reason, during the investigation, FIFA officers were not able to talk to any of these referees. Beyond the unwillingness to cooperate clearly demonstrated by the SAFA agents, this case reflects the lack of coercive tools available to FIFA investigators who found themselves ill-equipped to carry out the investigation they were tasked with. In the absence of a parallel investigation by state authorities that could have facilitate access to evidence that the concerned persons did not want to deliver, the investigation conducted by Mr Eaton and Mr Steans encountered *limits inherent to the private nature of the disciplinary power exercised by sports organisations*.

⁴¹² Report prepared by Terry STEANS, specialist in sports corruption, on behalf of FIFA’s security team, 4 October 2012, § 140, p. 6. Available at [<http://fr.scribd.com/doc/117677079/Fifa-report-on-Safa-match-fixing>].

With the exception of South Africa against Guatemala match,⁴¹³ no direct evidence of the manipulation of other matches was found. However, according to investigators:

"[...] with the involvement of the Singaporean Wilson PERUMAL RAJ, and his match-fixing gang, backed by Dan Tan SEET ENG and his criminal financing connections, it is almost certain that the referees under their control were used to achieve the required outcome by manipulating the results of these matches".⁴¹⁴

Faced with the insufficiency of the evidence collected, the investigators advised FIFA to keep the investigation open and deepen it especially regarding the behaviour of some SAFA officials.⁴¹⁵ They also suggested transferring relevant information to the South African police authorities due to the possible commission of certain offenses.

Difficulties in obtaining evidence by sports organisations jeopardise the effectiveness of disciplinary proceedings. In order for each procedure to take its course and succeed, it appears that the sports authorities and state authorities should coordinate their activities within the frameworks defined by the law.

In addition, it may be noted that even if disciplinary law is often less demanding than criminal law in terms of evidence, the establishment of acts of manipulation of sports competitions is not always easy since the authorities responsible for the investigation cannot engage in obtaining evidence through means, to which the bodies charged with the criminal investigation have exclusive access.

§ 2. Difficulties Encountered in Judicial Proceedings before State Courts

Before national courts, the difficulties concerning the submission of evidence are of a different order but also have the effect of complicating the investigation process. All the evidence is not admissible in state courts.⁴¹⁶

⁴¹³ The information transferred to FIFA by the Early Warning System and by Sportradar in connection to this match supports the assumption of a certain manipulation. According to the report:

"The EWS report on this match states that there were strange movements in the betting in the opening minutes that could be attributed to pre-match information leaks but also to some insider betting connected to the referee, which they cite as an indicator for possible manipulation. [...] The Sportradar report on this match [...], states that mistakes happen in a match but that CHAIBOU's performance was highly suspicious. When viewed alongside the betting patterns, it is likely that this match was manipulated for betting fraud purposes." (§ 470, p. 18).

⁴¹⁴ *Idem*, p. 44, § 1030.

⁴¹⁵ *"The lack of direct evidence and the evasive and unhelpful approach to the investigation by most SAFA staff, however, has resulted in a conclusion that there is insufficiently cogent evidence at this time to conclude to a criminal standard that any of the matches other than South Africa v. Guatemala were fixed. However with new sources coming forward all the time, the necessary evidence may yet arrive [...]"* (*idem*, p. 44, § 1030).

⁴¹⁶ Although in the context of arbitration, including CAS arbitration, and *a fortiori* in the context of extra-judicial procedures such as disciplinary procedures, the rule generally adopted is that of freedom of the evidence, it is inaccurate to suggest that any evidence can thus be produced. The evidence in flagrant violation of fundamental rights such as the right to privacy must be held inadmissible before arbitral tribunals. See on this subject the developments in the section on "The Common Principles Applicable to all Stakeholders" (Part 3, Title 3, Chapter 3).

The type of evidence that can be produced may vary depending on the type of proceedings but in all cases, they must have been obtained legally.⁴¹⁷

As for the standard of proof - that is to say, the threshold of certainty required for a finding of the actual commission of the offense – again, this can vary depending on whether it is in the context of civil proceedings or criminal proceedings. In the latter case, the degree of certainty required is the highest and it is often required that the offense be established "beyond a reasonable doubt".

A. The Difficulty to Prove certain Illegal Behaviours

Depending on the illegal behaviour, the relevance of evidence may vary and jurisdictions are sometimes forced to use the innovative methods.

In France, the offense of swindle on the basis of which handball players suspected of manipulating games in the French league were investigated, is "the act of misleading a natural or legal person, to its detriment or the detriment of a third party, into transferring money, valuables or any property, providing a service or consenting to an act creating an obligation or discharging one either through the use of a false name or false quality, or by abusing a true quality or through fraudulent manoeuvres."⁴¹⁸ Therefore, it is necessary to establish the presence of a fraudulent scheme aimed at deceiving a person or entity. Thus, it is necessary to prove not only that the players bet on their own defeat, but also that they altered the normal course of the event, to the detriment, it seems, of *La Française des Jeux* (the FFHB, the LNH the Montpellier and Cesson clubs also made civil claims). To this end, the investigation may rely on testimonies. But the investigative judge also sought technical expertise and requested a physiologist to evaluate the performance of the players on the field.⁴¹⁹ According to the report prepared by Pierre Sallet, expert in physiology, "all the objective evidence presented and studied under the expert evaluation points to an undeniable lack of will to play by some players on the Montpellier handball team during the first half of the meeting of 12 May 2012 against Cesson."⁴²⁰

⁴¹⁷ In this regard, the decision rendered by the English judges in the cases of Butt, Asif and Amir (Pakistani Cricket) can be surprising. No mention is made of the evidence provided by the authorities in this case although an essential issue concerned the admissibility of the recordings broadcasted by the British newspaper NoTW and had been made in a manner that infringed the right to privacy of the athletes involved. This does not necessarily imply the inadmissibility of the recordings, but the judicial economy which is shown by the judges can be criticised, since the legitimacy of the process is involved. Indeed, pursuant to section 78 of the 1984 Police and Criminal Evidence Act and the 1998 Human Rights Act (incorporating the European Convention on Human Rights into English law) judges enjoy considerable leeway when deciding on the exclusion of evidence obtained in violation of the rights of the accused. In particular, when it comes to the violation of a right recognised as not being absolute, such as the right to privacy (Article 8 of the Convention), the British courts consider that the evidence must be excluded (held inadmissible) only if its use prejudices the right to a fair trial (Article 6 of the Convention). The interpretation of the latter takes into account not only the rights of the accused but also the rights of the victims and the public interest in investigating the crime. For this reason, it is rare that evidence such as surreptitious recordings, even when they were obtained by the police, be declared inadmissible.

⁴¹⁸ Article 313-1 of the Penal Code.

⁴¹⁹ P. BELLOIR, "La corruption des paris sportifs", *AJ Pénal*, 2013, p. 314.

⁴²⁰ *L'Équipe*, 12 May 2013.

However, the investigative chamber of the *Cour d'appel de Montpellier* cancelled this first expert report because it did not present all the guarantees of independence in relation to two of the plaintiffs (the FFHB and LNH) before ordering a new expertise entrusted this time to a specialist in video analysis and a former international referee.⁴²¹ The French justice system must therefore deal with a type of evidence that it had certainly not used before.

In the case of fixed football matches **in Greece**, the establishment of evidence also constituted one of the main difficulties. According to information gathered by journalists present at the first trial,⁴²² most of the witnesses claimed to know nothing, which caused reactions of the public prosecutor on several occasions. The prosecutor also criticised the OPAP (ΟΠΑΠ: *Οργανισμός Προγνωστικών Αγώνων Ποδοσφαίρου*), the body (formerly public but privatised in 2013) offering sports bets in Greece, for not having cooperated with the authorities. The president of OPAP, however, argued that OPAP had not offered bets on most of the suspicious competitions and said that they did not have evidence that the main defendant, Mr Psomiades won large sums by placing bets on suspicious matches.

Curiously, in this case, the OPAP did not make claims as a civil party, although this body could be considered as a victim of fraud because of irregular bets on fixed meetings, especially since this organisation admitted that for a number of matches, the UEFA conclusions were correct. Practically, and from a procedural point of view, the absence of a civil action resulted in the fact the choice of witnesses mainly fell upon judges and possibly the defendants. Although the court had the power to call other witnesses during the hearing, it appears that some people who, both in the opinion of the court as well as the counsel for the accused, could shed some light on the case were not summoned, such as some journalists, the secretary general of sports who had knowledge of the UEFA file since 2009, the EPO sports judges who had triggered the disciplinary action against the teams and individuals involved, the members of the disciplinary boards of the Super League, the Football League and the EPO who had made decisions convicting or acquitting certain teams or individuals, or even football players who participated in acts of manipulation because their teams would not pay their wages on a regular basis.⁴²³

Finally, the case of the **Russian legislation** prior to its amendment in 2010 should be mentioned.⁴²⁴ The Criminal Code of the Russian Federation, in force since 1996, contains article 184 on the "illegal manipulation of the results of official sports competitions and commercial competitions", which criminalises the bribery of athletes and other members of the sports movement and the illegal collection of sums of money or other consideration in connection to the manipulation of competitions.

⁴²¹ *L'Équipe*, 17 February 2014.

⁴²² See *supra*, Section 1, § 2, A, 3 of this Chapter.

⁴²³ On the issue of criminal responsibility of players, see *supra* Title 2, Chapter 2, Section 1, § 2, A, 3, "The Greek Legislation of the Match-Fixing Scandal".

⁴²⁴ For the latest revision of Article 184 of the Russian Federation's Penal Code by Law No. 198-FZ of 23 July 2013, see *infra* Part 2, Title, 3, Chapter 2, Section 2, "Repercussion of the International Agenda on National Agendas".

However, no conviction was ever pronounced on the basis of this provision, despite a notoriously large number of suspicious matches having taken place in Russia. Most commentators agree on the fact that if Article 184 of the Criminal Code is a dead letter, it is because of the extreme difficulty to bring evidence of the alleged offenses. In particular, such proof rests on the testimony of athletes who themselves were approached during a corruption attempt. And it is understandable that even if this goes against their interests, many may prefer to remain silent rather than report the attempt. The changes made in 2010 to the Russian law enforcement system also aim to ensure that the person who voluntarily reported the fact of corruption to the competent bodies is exempted from criminal liability. This confirms the fact that the previous device could appear as a deterrent, since whistle-blowers did not receive any specific protection.⁴²⁵

Regarding the establishment of the alleged facts, the difficulty to prove the facts as well as the standard of proof required may constitute serious obstacles to the establishment of the responsibilities.

B. Uncertainty linked to the Use of Certain Forms of Evidence

In other cases, constraints imposed on judicial authorities make it impossible to use certain evidence, although it could be decisive for the outcome of the trial. Even though these restrictions can be easily understood in the light of the requirement of protecting suspects against an excessive intrusion of the public authorities into their private lives, in cases of corruption in sport, where scandals are often revealed by the press after journalists obtained confessions that leave no doubt as to the involvement of the people concerned, this can create a difficult situation. How to conduct the trial without considering the evidence, even though its contents are notorious?

The ***Calcioscommesse*** case highlights another type of difficulty that is related to these general considerations. As previously noted, the offense of sporting fraud is broad enough to cover most actions related to fixed bets. It is more difficult to prove, especially without wiretaps, the existence of corruption attempts than fraud, which covers various types of facts. Corruption involves demonstrating an "act of will" (intent to corrupt) that may not lead to fraudulent behaviour, but which is still an offense. Indeed, with regard to the briber, the offense of fraud does not allow the use of wiretaps which were nevertheless shown to be essential to demonstrate the attempted bribery. The use of wiretaps for evidentiary purposes is strictly regulated by the Code of Criminal Procedure, which restricts their use to a limited number of cases (the offense must be punishable by at least 5 years of imprisonment).⁴²⁶

⁴²⁵ For a more detailed presentation of the Russian law, see *infra* Part 2, Title 3, Chapter 2, Section 2, "Repercussions of the International Agenda on National Agendas".

⁴²⁶ Article 267 of the Italian Penal Procedure Code provides in particular that the authorisation to use phone taps should be granted by "a motivated order when there are serious indications of offences to the law and when the use of wire taps is absolutely essential for the progress of the investigation."

It is also possible to refer to the offense of conspiracy (*associazione per delinquere*) under Article 416 of the Penal Code, punishable by sentences of up to seven years in prison for organising or promoting the conspiracy and up to five years for mere participation. It should however be emphasised that Italian law restricts the use of wiretaps to the offenses for which they were originally intended. This means that if the offense of conspiracy is not established and that the only count at the end of the investigations is sporting fraud, wiretaps will not be used to prove the guilt of the accused.

The use of these wiretaps by the disciplinary authorities having been permitted, there is a looming risk of an outrageous situation where disciplinary bodies impose sporting sanctions on the basis of wiretaps produced by the ordinary justice system which is unable to achieve a fraud conviction, since it will be unable to produce the wiretaps... The fundamental character of the offense of conspiracy is obvious.

However, the complexity of these networks is an additional hurdle to the effectiveness of the justice system, since the investigations can seem to be never-ending and the trials never start. Regarding players, similar difficulties arise since it is overly complex to characterise fraudulent acts during a match. Therefore, the use of wiretaps is also essential to demonstrate the participation of the footballer in the fraud. Therefore it is also necessary to link the behaviour of the player in the offense of conspiracy, which is often a complex task.

Conclusion of Section 2

The constraints surrounding the admissibility of evidence are not proper to the manipulation of competitions, in the case of State justice systems. Since the offenses in question are all specific, it seems necessary to adapt the type of evidence to the particular offenses. This adjustment can be made possible when the State implements a specific offense of corruption or fraud in sport in its internal law.

Apart from this case, the modulation of the types evidence is less clear, which makes it all the more difficult to achieve a coherent treatment, at least in appearance, of the question of the admissibility of evidence before the sporting authorities and before State courts.

Section 3. Difficulties linked to the Relationship between the Criminal Action and the Disciplinary Action

Finally, since the same case of manipulation of sporting events can give rise to simultaneous disciplinary and criminal actions, certain cases raise difficulties concerning the relationship between the various proceedings. Here, it is important to understand that the disciplinary action and the criminal proceedings are clearly distinct and independent from each other.⁴²⁷

Although they are both designed to punish behaviours that disturb the established social order, respectively in the sporting public order and State public order – which necessarily causes them to converge⁴²⁸ - they are based on different rules and are conducted through different and specific procedures. Therefore, *the conclusions drawn from the outcome of the disciplinary proceedings do not prejudice the outcome of the criminal proceedings, and vice versa (in practice, however, the disciplinary procedure, which is usually faster, is concluded first)*.

However, this autonomy should not mean that the two types of procedures are strictly segregated. Experience shows that a minimum of cooperation and consideration between sports authorities and state authorities is often necessary for the successful conduct of disciplinary procedures as well as court procedures before the ordinary courts.⁴²⁹ The following examples give an overview of the various points of contact between the two types of procedures.

§ 1. Difficulties Arising from Constraints Specific to Each Type of Procedure

One type of problems can occur because disciplinary proceedings and criminal proceedings do not require the same time to reach a final outcome.⁴³⁰ This is easily explained by the more severe legal constraints in the criminal justice system. Judicial proceedings are slow, and sometimes excessively so, when compared with the speed of disciplinary proceedings, which sometimes earn the reputation of being expeditious.

⁴²⁷ See Greek law No. 3057-2002: this law added a new § 5 to Article 132 of Law No. 2725-1999 (which was the first Greek law to deal with the manipulation of sports competitions). § 5 provided that the disciplinary board of the competent sports association has the power to impose disciplinary penalties on clubs if the perpetrators of acts of bribery and corruption with the goal of manipulating the outcome of an event (acts criminalised by Article 132) were athletes, coaches, officials, or members of a club. It stated in this context that the disciplinary process was independent of the criminal proceedings for the same acts. However, curiously, the new Greek law 4049-2012, which now governs this area, contains the provision on the autonomy of both procedures, while allowing for the possibility of disciplinary sanctions in parallel with the "penal" sanctions for the same offence.

⁴²⁸ On the convergence of the essential interests of the sporting movement and the public authorities in the context of the protection of integrity in sport, see below, Part 3, Title 3, Chapter 3, Section 2, § 1.

⁴²⁹ The previously studied example of the difficulty in gathering evidence by sports organisations should be recalled here.

⁴³⁰ Even when a sanctioned athlete appeals the decision of the sports federation before an arbitral tribunal, including the CAS, the procedure is generally faster than criminal cases before ordinary courts.

However, these critical assessments must be nuanced. It is not easy, given the extreme complexity of some cases brought to the attention of State courts, to genuinely accelerate the proceedings. The scandal of **fixed football matches in Greece**, whose procedural genesis was previously reported, constitutes a prime example of this assertion.⁴³¹

The same goes for the trials initiated before the Italian courts in connection with the **Calcioscommesse scandal**. Concerning the investigations led by the prosecutor of Cremona, Roberto Di Martino, the trial before the ordinary courts was opened in December 2013. More than one hundred persons are accused and the contents of more than two hundred electronic devices (phones, computers...) is being analysed. Meanwhile, two other trials should take place, one in Bari, opened in December 2013 and the other in Naples. However, it is difficult to predict the exact developments of the cases before the ordinary courts as illustrated by the new "surprise" arrests that took place on 17 December 2013 in Cremona. These recent arrests connected to more than thirty matches in the first division and fifty matches in the lower divisions, during the 2011/2012 and 2012/2013 Championships. In addition, during the investigation, the prosecutor of Cremona revealed the transnational nature of the case. In particular, the statements of Wilson Raj Perumal, the Singaporean national arrested in Finland in February 2011, led to the advancement of the investigations. Among other revelations, Mr Perumal said that the organisation responsible for the fixed bets was headed by a certain See Eng Tan, also known as "Dan." According to Mr Perumal, Dan heads the various networks discovered during the investigations: the "Bologna" network, which probably included Giuseppe Signori and the network of "gypsies", which included Almir Gegic (player of di Chiasso, at the heart of several investigations). According to the prosecutor Di Martino, but given the inextricable nature of the case, it is not difficult to reach the same conclusion: this case is far from over, especially since "notwithstanding arrests and investigations, most of these people continue to do what they did before."⁴³²

In addition, sports disciplinary bodies and State courts are not, in principle, bound by the same rules on the taking of evidence, so that the latter may find it more difficult to establish the facts alleged against the accused persons.⁴³³ Regarding the legal norms, the fact that an athlete may be sanctioned, for the same offense, by his sports federation but acquitted by the State justice system, including for lack of evidence, does not constitute an anomaly in the system's functioning. Yet, in the eyes of the general public, such a situation can sometimes be interpreted as a repudiation of the disciplinary proceedings which are, moreover, often criticised.⁴³⁴

⁴³¹ See *supra* Part 1, Title 2, Chapter 2, Section 1, § 1, B, 1.

⁴³² Press conference of public prosecutor DI MARTINO: [<http://video.calciolab.com/notizie/di-martino-il-calcioscommesse-non-si-e-fermato-824>]. See also the following article: "Calcioscommesse, Gattuso indagato con Brocchi", 17/12/2013, *Corriere della Sera*.

⁴³³ See *supra*.

⁴³⁴ See *infra* Part 3, Title 3, Chapter 3, Section 2, "The Common Principles Applicable to all Stakeholders".

The contrast between the pace of the criminal trials engaged in connection with the *Calcioscommesse* scandal and speed with which the disciplinary sanctions were adopted may for example contribute to discrediting one type of procedure or the other although, again, these distinct time frames are perfectly explained from a legal point of view. The speed that characterises the action of the sports justice system, which inevitably impacts the "quality" of the judgments, was supposed to be a response to a crisis of credibility of Italian professional football. However, the overexposure of some cases that led to spectacular sanctions that were later cancelled or significantly reduced by the appeal and *cassation* judges, and the superposition of judicial proceedings, which are naturally more respectful of the presumption of innocence, have ultimately contributed to further discrediting the federal institutions. This phenomenon may be further accentuated if the pending criminal proceedings result in different sentences than those pronounced by the sports judges. It is also not excluded, in cases where persons who escaped sporting sanctions but who were later convicted by State courts, that the sports judge will have to rule a second time, because of the new evidence brought to light in the criminal proceedings. This possibility would result in further damage to the credibility of sports institutions.

More generally, the purpose of the sports disciplinary apparatus and that of the State repressive apparatus sometimes seem incompatible and cause misunderstanding on the part of the public opinion. While the sporting justice system promotes quick action and immediate sanctions against sports stakeholders, in order to preserve the integrity of the sporting competitions in progress and more generally the credibility of the sporting movement, sometimes at the expense of defence rights guarantees, the criminal justice system tends to concentrate on what constitutes a real danger to public order, that is to say, large-scale fraud and the link between the phenomenon of fixed bets and organised crime, while acting within the scope of a strict legality, in order to preserve the rights of the accused.

However, the charges are often identical, or at least formulated in identical terms, but do not give rise to the same treatment, suggesting the existence of a double justice, acting inconsistently. The perplexity of the public is inevitably increased.

In light of the examples that were just mentioned, it is not useless to remember the aphorism judge Gordon Hewart: "Not only must Justice be done; it must also be seen to be done".⁴³⁵ Although the differences between criminal and disciplinary proceedings in terms of speed or of evidence, for example, is perfectly explained by the different nature of these two types of procedures, they converge in their objective when it comes to combating the manipulation of sports competitions. It may therefore be necessary to work towards a better coordination and harmonisation to avoid the loss of credibility of the procedures, at least in the eyes of the general public, whose role is essential to the preservation of sports ethics.

⁴³⁵ *R v Sussex Justices, Ex parte McCarthy*, [1924] 1 KB 256, [1923] All ER Rep 233.

§ 2. The Risk of Direct Interference between the Proceedings

The previously considered situations target cases where the procedures do not directly interfere with each other rather, where their parallel conduct can influence their perception by the outside observer. But it is possible that these interferences be more direct and are therefore perceived as real intrusions. The case alluded to here is that in which, *in order not to impede the judicial proceedings before State courts, the disciplinary proceedings must be suspended.*

The examples are numerous where state courts address injunctions to suspend disciplinary proceedings to the managers of sports organisations. Thus, in the case of Harry "Butch" Reynolds, for example, the American sprinter had obtained from a U.S. court, a preliminary injunction allowing him to participate in the American preselections for the Barcelona Olympics, even though the IAAF suspended this athlete,⁴³⁶ while in the *Mitu, Nikolovski and Fassotte v. URBSFA* case, the Belgian courts granted the request of the three players sanctioned by their organisation to obtain an injunction to suspend enforcement until the outcome of criminal proceedings that had also been also initiated, on the grounds that the disciplinary proceedings were vitiated.⁴³⁷

The **case of Australian jockey Damien Oliver** is another example of interference of State judges in the course of disciplinary proceedings. In 2010, Mr Oliver had bet 10,000 dollars on a horse, *Miss Octopussy*, participating in a race where Mr Oliver rode another horse. *Miss Octopussy*, the favourite horse in the race, won and Mr Oliver came in sixth. This information having surfaced in the course of an investigation whose purpose had no relationship with these facts, in August 2012, Racing Victoria Limited (RVL), a private organisation responsible for the administration of horse racing in the State of Victoria, Australia, in the exercise of its disciplinary jurisdiction over participants to races,⁴³⁸ launched an investigation into the bet made by Mr Oliver in 2010.⁴³⁹ This organisation also transferred some relevant information to the Victoria police.

During the investigation phase conducted by RVL, Mr Oliver invoked his right to remain silent and not to issue statements that could be considered as self-incriminating in the context of possible criminal proceedings.⁴⁴⁰ On the advice of his lawyer, the suspect refused to talk to the representatives of the disciplinary bodies. RVL considered that Oliver's behaviour was legal and that there was no way to request his participation in the investigation until the outcome of the police investigation was determined.

⁴³⁶ F. LATTY, *La lex sportiva...*, *op. cit.*, pp. 464-465.

⁴³⁷ In this sense, see CA, Brussels, 8 February 2007, which ruled in favour of the athlete. The Brussels Court of Appeals, in a decision dated 8 February 2007, ruled in favour of the athletes. See also decision in the case of *FC Sion/ Olympique des Alpes SA v. UEFA*.

⁴³⁸ *Australian Rules of Racing*, Article 8.

⁴³⁹ Office of Racing Integrity Commissioner, Final Report on the Investigation of the 'Damien Oliver Inquiry' 2012 by Racing Victoria Limited (RVL), June 2013, 8 and 20-23. The RVL Board extended the brief of the Investigation Panel's *the Smoking Aces Inquiry* to include the Oliver allegation: *The Oliver Inquiry*.

⁴⁴⁰ Office of the Racing Integrity Commissioner, Final Report on the Investigation of the 'Damien Oliver Inquiry' 2012 by Racing Victoria Limited (RVL), June 2013, 21.

No provisional suspension was ordered during the disciplinary investigation, which allowed Mr Oliver to participate in various tournaments including the famous Melbourne Cup in November 2012. In the meantime, the police continued to investigate, but refused to inform RVL if Mr Oliver was held as a suspect of an offense.

A few days after the end of the tournament, Oliver confessed to betting on *Miss Octopussy* in 2010. He was therefore accused of violating the prohibition of betting included in the Rules of Australian horse racing.⁴⁴¹ After having pleaded guilty, Oliver was sentenced to eight months of absolute suspension, plus 2 months of limited suspension.⁴⁴²

The police did not follow up on the proceedings against the Australian jockey.

During the period of three months that elapsed between the start of the disciplinary investigation and the imposition of a penalty that allowed the suspect to participate in the most important tournament of the year, RVL was the target of significant criticism from press and the Australian public opinion. Following this controversy, the Racing Integrity Commissioner⁴⁴³ initiated an investigation to determine whether RVL had properly handled the Oliver case.

Although in its final report, the Commissioner came to the conclusion that RVL drove its investigation in a methodical and professional manner, the report stressed that the right to remain silent and the provisions relating to self-incrimination, compliance with which was the cause of the delay in the progress of the investigation, were not directly applicable to disciplinary proceedings. The Commissioner also found that the wrong way in which these provisions were interpreted by the RVL investigative panel (IP) is partly due to inaccurate information supplied to that body by the Victoria Police.⁴⁴⁴

Therefore, the lack of clarity regarding the application of the rights related to the criminal proceedings, led to the unfortunate paralysis of the disciplinary proceedings and discredited the sports organisation that led it. Although it cannot be affirmed that there was a deliberate attempt to prejudice the conduct of the disciplinary investigation by the police authorities, a more efficient transfer of information could have contributed to a parallel progression and without interference of the two surveys.

⁴⁴¹ Australian Rules of Racing, Article 8.

⁴⁴² According to article AR 182(d), "a disqualified rider shall not ride any racehorse in any race, official trial, jump-out or test. Under AR 183A, a rider under suspension may be permitted to ride trackwork. Structuring jockeys' penalties in this way is common, and allows the jockey to return to racing fitness in a structured way".

⁴⁴³ The Office of the Racing Integrity Commissioner is an official independent body tasked, among other functions, with investigating behaviour violating integrity that take place in races.

⁴⁴⁴ Office of the Racing Integrity Commissioner, Final Report on the Investigation of the 'Damien Oliver Inquiry' 2012 by Racing Victoria Limited (RVL), June 2013, § 90 p. 34; § 146, p. 43.

The **case of fixed football matches for the World Cup 2010** illustrates, in yet another way, these risks of interference. In December 2012, following the publication of the results of the investigation conducted on behalf of FIFA in connection with the manipulation preparatory friendly matches for the 2010 World Cup, SAFA set up an emergency committee to determine which measures should be adopted. This committee decided to suspend the officials suspected of being involved in the manipulations. A few weeks later, however, the Executive Committee of SAFA cancelled the suspensions stating that the Emergency Committee was not competent to decide such measures.⁴⁴⁵ The Executive Committee also decided to establish an independent commission tasked with reviewing the report prepared on behalf of FIFA. The conditions for the establishment and functioning of this committee were to be established by mutual agreement by the SAFA, the South African Sports Confederation, the Olympic Committee (SASCOC) and the Minister of Sports.

However, the minister in question, Mr Fikile Mbalula, refused to support this initiative because in his opinion, such a commission would be powerless and probably biased because of the participation of members of the SAFA. Instead of a joint committee, the Minister asked the President of South Africa to set up a constitutional commission, chaired by a judge and vested with the necessary powers to collect relevant evidence, conduct a thorough investigation and impose the necessary sanctions.

In April 2013, the proposal of the Minister Mbalula obtained the support of FIFA and SAFA.⁴⁴⁶ However, a few months later, hostile reactions to this compromise emerged. The South African federation feared that the scope of the investigation would go beyond the manipulation of the preparatory matches, and that it would include the financial results of this event, since some media relayed the idea that the intention of the South African authorities was to undertake a more comprehensive investigation.⁴⁴⁷ FIFA warned Minister Mbalula that any expansion of the scope of the investigation could constitute a violation of the SAFA's autonomy.⁴⁴⁸

Despite the successive statements of Minister Mbalula,⁴⁴⁹ in November 2013, no appointment had been made and the constitutional commission was still only a project. Clearly annoyed by the inaction of the South African government, FIFA finally decided to take things in hand. A preliminary investigation was therefore launched by Michael Garcia, president of the investigative chamber of the International Federation's Ethics Committee. The reaction of the Minister Mbalula was prompt. He stated:

⁴⁴⁵ City Press (South African newspaper), 24 February 2013, [<http://www.citypress.co.za/sport/safa-match-fixing-its-going-to-get-nasty/>].

⁴⁴⁶ Tensport, (Australian newspaper), 4 May 2013, [<http://tensport.com.au/news/newsarticles/Football-SAFA-agrees-to-match-fixing-inquiry.htm>].

⁴⁴⁷ Associated Press (AP), 28 April 2013, [<http://www.timescolonist.com/sports/match-fixing-money-allegations-chipping-away-at-south-africa-s-world-cup-legacy-1.141211>].

⁴⁴⁸ Sports Industry (South African newspaper), 19 April 2013, [<http://sportindustry.co.za/news/view/5512/FIFA>].

⁴⁴⁹ Day (South African newspaper), 20 August 2013, [<http://www.bdlive.co.za/sport/othersport/2013/08/20/government-not-sweeping-match-fixing-scandal-under-carpet>].

“Jerome Valcke and FIFA have no jurisdiction over South Africa. This is not a banana republic. The FIFA investigation doesn't stop what the SA government's enquiry is hoping to achieve. Their arrogance and pettiness will not make us to cower to asserting the principle of the sovereignty of our people and the right to take our own decisions. We are going ahead with our plans and are not going to take orders from Jerome Valcke.”⁴⁵⁰

While these statements might lead one to think that the disciplinary and State authorities would finally exercise their jurisdiction separately concerning the manipulation of the 2010 World Cup preparatory games, in March 2014, the South African President announced that no constitutional commission would be created to investigate this case and that only one investigation would be conducted by FIFA.⁴⁵¹

This reaction is all the more surprising since the disciplinary rules of the SAFA, that of FIFA and the national law of South Africa provided for the jurisdiction of the regular disciplinary and judicial authorities to investigate and punish infringements of the provisions specific to each of these normative sets.

Concerning disciplinary action, the SAFA disciplinary code establishes the jurisdiction of the Federation to investigate and punish abuses by officials of the Federation (Article 67 of the Statute of the SAFA). Although the impartiality of the disciplinary procedure may seem compromised in this case, the exercise of disciplinary power does not seem to be discretionary (Article 2 of the Disciplinary Code). In addition, risks of biased decisions could be conjured by the appeal before an arbitral tribunal and, if necessary, the Court of Arbitration for Sport (CAS) (Article 70 of the Statute of the SAFA).

The Criminal law of South Africa also has norms capable of punishing the behaviour of which SAFA officials are suspected. The 2004 South African Prevention and Combating of corrupt activities Act⁴⁵² contains a very broad definition of offenses relating to corruption in sport (§ 15) and corruption in connection with bets (§ 16), the behaviour of the SAFA officials and of all South African citizens and foreigners suspected of involvement in the manipulation could also be punished under this law.

In other cases, however, the possibility of interference was warded off and the independence of the judicial and disciplinary procedures was reaffirmed. But again, the lack of coordination or cooperation between sports disciplinary authorities and State authorities affects the proper administration of justice. The **case of Pakistani cricket** confirms this.

⁴⁵⁰ BBC Sports Journal, 18 November 2013, [<http://www.bbc.com/sport/0/football/24988889>].

⁴⁵¹ Reuters, 7 March 2014, [<http://www.reuters.com/article/2014/03/07/soccer-safrica-idUSL3N0M43EK20140307>].

⁴⁵² Law No. 12. 2004, *Government Gazette* on 18 April 2004.

Having taken note of the information that the British press was to release the following day concerning the participation to manipulation schemes of the three Pakistani cricket players, on 28 August 2010, Scotland Yard raided the players' hotel rooms of Pakistani players Butt, Amir and Asif. The evidence collected helped the Crown Prosecution Service to initiate a lawsuit against the three cricket matches and their manager.

This decision was announced on 4 February 2011, the day before the decision in the context of the disciplinary proceedings was to be made public, the council of the players requested that this procedure be suspended in order to allow them to prepare their defence before the English domestic courts. However, the ICC anti-corruption Court refused to postpone the trial hearing. This decision thus reaffirmed the independence of judicial and disciplinary proceedings.

Although the merits or legitimacy of the interferences of the State judge in disciplinary proceedings will not be discussed here, it is clear that such interferences are numerous and can be explained for various reasons. It is clear that the desirable cooperation between the sports movement and State authorities, in connection with the fight against the manipulation of sports competitions makes these interferences inevitable. A better definition of the context in which they may occur, especially in favour of specifying the concept of autonomy of the sports movement, should however help to avoid situations where disciplinary bodies and State authorities seem to challenge each other more than they cooperate with each other.

§ 3. Difficulties linked to Information Sharing

As already noted, the disciplinary bodies of sports organisations possessing limited means of coercion to obtain the necessary evidence to establish the facts, they could obviously benefit from the concomitant progress a criminal trial before State courts, and use certain elements of the case that the State authorities are willing to communicate. In this respect, the ICC was able to benefit from the evidence gathered by the English police in the Pakistani cricket case. In its decision of 5 February 2011, the Anti-Corruption Tribunal took into account the results of searches carried out by the police,⁴⁵³ the transcripts of interviews conducted by the Metropolitan Police (MPS) and the preliminary hearings of players, the correspondence and billing records recovered by the police as well as the summary of phone calls and text messages exchanged between Mr Majeed, Mr Butt, Mr Asif and Mr Amir.⁴⁵⁴ This information was certainly transferred to the sports organisation by the Crown Prosecution Service (CPS). Although the circumstances in which this exchange of information took place are not known, it appears that certain conditions were imposed on the ICC. Among them was the "suggestion" not to make public certain parts of the judgment before the end of the criminal proceedings.

⁴⁵³ *International Cricket Council (ICC) v. Salman Butt, Mohammad Asif and Mohammad Amir*, Determination, § 149, p. 55.

⁴⁵⁴ *Idem*, § 23, p. 8.

Before the CAS, Mr Assif criticised the ICC anti-corruption Tribunal for not conducting an independent investigation from the one conducted by the British police, since many of evidence used in disciplinary proceedings came from police investigations Tribunal. However, the CAS rightly rejected this argument.⁴⁵⁵

However, the exchange of information and evidence between the disciplinary bodies and the State authorities can be more delicate. As was previously noted, this collaboration is most often made on an informal basis and therefore, depends on the willingness of the stakeholders. More importantly, State authorities may be reluctant to provide information to the disciplinary bodies of sports organisations that are not independent from the sports institution itself. These reservations are obviously much stronger when there are suspicions about the involvement of the sports organisation itself in the manipulation scheme.

§ 4. Difficulties Linked to the Articulation of the Imposed Sanctions

Finally, although the principle of the autonomy of disciplinary proceedings and State court proceedings should again be brought up, the articulation of disciplinary sanctions and criminal penalties which may result may give rise to some difficulties. One of the key questions concerns to the issue of whether the principle of *ne bis in idem* is applicable in the case of sports disciplinary sanctions and criminal penalties imposed on the same person in relation to the same facts (even when they are subject to various qualifications under the law applicable to one or the other procedure). This issue is detailed elsewhere,⁴⁵⁶ it is not developed here.

But beyond this specific issue, other problems may occur. The case of **manipulated football matches in Greece** illustrates one such problem. Following the disciplinary measures taken by the Disciplinary Committee and the Appeal Committee of the EPO, the Commission on professional sports, an independent authority established by Law No. 2725/1999 and competent to issue licences to teams ("Certificates") allowing them to participate in the professional football league, decided in August 2011 to refuse to issue such a licence to the two teams involved, who were therefore automatically relegated to the non-professional League 4. The reason for this decision was that the two teams could not get a licence to participate to the extent that their owners had been entirely excluded from football world by the disciplinary authorities of the EPO (see above). The fact that they continued to own and control the teams, *i.e.* no change of ownership had been made, justified the non-issuance of a licence to participate in the professional leagues. The Commission of professional sports, on the basis of the disciplinary sanctions imposed against the owners of the teams involved, indirectly circumvented the effect of the decision of the Appeal Board of the EPO which had not upheld the relegation of the teams as a disciplinary sanction for acts of manipulation of football matches.

⁴⁵⁵ § 44.

⁴⁵⁶ See *infra*, Part 3, Title 3, Chapter 3, Section 2, § 3.

However, it should be noted that under Article 77 § 3 of Law 2725/1999, the Commission of professional sports must refuse to issue a licence to participate in the case of findings of serious violations of the Law (which covers the offense of manipulating competitions: see below). It is therefore possible to question whether this authority could rely, without awaiting the outcome of the criminal proceedings, on the mere finding by the EPO bodies, of a violation of the disciplinary code committed by the owners of the concerned teams to refuse to issue them a licence to participate. In any case, the decision of the Commission seems to have been appealed before the Council of State, but no decision has been reported to date.

The indirect intervention of the Commission on professional sports, a non-judicial authority, in the disciplinary process undertaken by the competent authorities of the EPO (Disciplinary Committee and Appeal Board) therefore raises the question of the relationship and in particular the coordination between the actions of the various sports authorities, as well as between disciplinary sanctions imposed on teams those imposed on the individuals leading them. The Greek example is used to emphasise the random nature of disciplinary procedures whose legitimacy is therefore questionable.⁴⁵⁷

Conclusion of Section 3

This section allowed us to show that even though they should be distinguished between, criminal and disciplinary sanctions must be dealt with simultaneously, whether regarding the time of the action or the standards of evidence to be used. Under certain circumstances, the seriousness of the facts that gave rise to the manipulation of sports competitions also leads one to rethink both the articulation of the sanctions between one and the other, as well as the means for administering the evidence of such manipulations.

Conclusion of Chapter 2

Linked to a number of constraints related to the consequences of the classical distinction between criminal and disciplinary actions, the difficulties that underly the understanding of the manipulation of sports competitions is also explained by the barriers hindering the efforts to attempt to embrace, in one exhaustive definition, and ideally under one type of “offence”, the practices that can possibly be listed and described under one category.

Conclusion of Title 2

It has already been shown that the countries around the world and all kinds of sport are potentially concerned with the manipulation of sports competitions.

⁴⁵⁷ The issue of the transnational harmonisation of penalties incurred in case of participation in a scheme of manipulation of sports competitions therefore arises as it was also previously raised in the context of the fight against doping (the problem having been only partially resolved with the adoption of the World Anti-Doping Code).

This is why the effort of categorising and listing the facts constituting the manipulation of sports competitions, as well as a first description of the criminal and disciplinary sanctions brought against them are necessary.

Conclusion of Part 1

The data collected in this first part represent an unprecedented and unique view of the phenomenon of the manipulation of sports competitions.

A sense of complexity emerges, leading to scepticism as to the outcome of the actions undertaken for the benefit of sport integrity, in addition to a sense of urgency to understand, regulate and monitor a constantly expanding phenomenon, whether one is to ponder its quantitative dimension or the growing sophistication of the vectors responsible for its propagation, on the forefront of which sporting bets are found.

However, once a phenomenon is identified and quantified, the search for the best devices for preventing and sanctioning the manipulation of sports competitions first requires a questioning of the strategy of stakeholders and their rationale.

This will constitute the subject of the second part of the report.

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