

## Verdict: guilty. Criminal law applies to match-fixing

Match-fixing has been the focus of the sport policy agenda over recent months. Betting scandals, sportsmen in the dock, ongoing investigations on the manipulation of sport results<sup>1</sup> but also the determination of betting and sport organisations to fight against this cancer have splashed across the headlines during past months. At policy level, the Council of Europe adopted the Recommendation on promotion of the integrity of sport against manipulation of results (September 2011), the EU Council the Conclusions on combating match-fixing (November 2011), and the European Parliament the Resolution on the European Dimension of Sport (February 2012). Episodes of match-fixing may concern both professional and amateur sports and usually show a transnational dimension, in particular with regard to betting motivated cases. Indeed, online betting has contributed to the spread of this criminal activity.

In this context, KEA has recently published a study prepared for the European Commission to map the criminal provisions and case law in the 27 Member States. The ultimate purpose was to ascertain the most efficient criminal law mechanism to fight match-fixing. The response is not straightforward.

The European legal landscape is not uniform; whilst some countries focus on general offences of corruption or fraud, others have implemented specific sport offences to cope with match-fixing - contained either in their criminal codes (Bulgaria, Spain), sports laws (Cyprus, Poland, Greece) or special criminal laws (Italy, Malta, Portugal).<sup>2</sup> In the UK, betting related match-fixing episodes may be punished under the offence of cheating at gambling. Case law is rare. Few court decisions - applying either general or specific offences - have been identified through the research.<sup>3</sup>

Applicable provisions differ greatly as regards the act to be criminalised as well as the scope, objective and subjective

elements of the offences or the relevant sanctions. They show shortcomings that could make them difficult to apply to major match-fixing episodes.

In relation to the offence of corruption, subjective conditions concerning the scope of the offence are not always appropriate for match-fixing cases. In many countries, they require the bribed person to hold a manager or an employee status, a condition which does not exist in all match-fixing cases - in particular as far as betting motivated cases are concerned where match-fixing also involves non-professional sports. This is the case in Belgium, Luxembourg, Romania and Sweden. The appropriateness of the offence of fraud for this purpose is also debated. Whilst in some countries uncertainties concerning its application to the manipulation of sports events led to the adoption of a specific sport offence, in others (the paradigm being Germany) judges do not seem to face major problems in applying fraud to match-fixing events. However, as argued by the doctrines of different countries, it can be extremely difficult to prove all of the elements of a fraud offence. On the other side, specific sport offences contain certain elements that are particularly adequate for dealing with match-fixing cases, including a clearer and more comprehensive scope in relation to legally protected interests - fair play in sport competitions -; higher penalties for betting related cases<sup>4</sup>; an obligation to report<sup>5</sup>; measures to exonerate from criminal liability those who inform the police<sup>6</sup>, and 'insider information' provisions<sup>7</sup>. However, in some cases penalties seem to be too low<sup>8</sup> or provisions seem not to be fully adequate to deal with certain episodes of match-fixing<sup>9</sup>.

There are indeed important discrepancies in relation to the effectiveness of general (i.e. corruption or fraud) versus specific sport offences. Although a sport offence may appear



1. Among others one could mention the Bochum match-fixing scandal, the scandal of the Pakistan's summer 2010 cricket tour of England, Calciopoli scandal in Italian football or the recent match-fixing investigation by authorities in Turkey where nearly 93 people are suspected to have been involved with fixing games in 2011.
2. At the time of drafting the study France amended the Criminal Code to include betting related match-fixing as a modality of the offence of corruption; Sweden introduced a bill referring to betting corruption; and Greece presented a proposal to modify the Sports Law to ensure that betting related match-fixing is punished with 10 years of imprisonment. Similar proposals are under consideration in Australia and Russia.
3. Cases have been identified in Czech Republic, Finland, France, Germany, Italy, Poland, Portugal, Malta and UK. Nevertheless, there are ongoing investigations in Austria, Belgium, the Czech Republic, Germany, Greece, Hungary, Italy, Malta, Poland, Portugal, Romania and Slovenia.
4. Article 1.3, *Legge 13 dicembre 1989, n. 401: truffa sportiva*, Italy.
5. See for example art. 4, Italian law or art. 4, Prevention of Corruption (players) Act 1976, ACT XIX of 1976 (Malta).
6. So they do art. 46 Act of 25 June 2010 on Sport (Poland) or art. 9, Prevention of Corruption (players) Act 1976, (Malta).
7. See art. 47 of Act of 25 June 2010 on Sport (Poland).
8. As it is the case in Greece, with a maximum penalty of 6 months.
9. For example in Spain, where according to the doctrine, new provisions are difficult to apply to betting related cases involving non-professional sports.

at first glance more appropriate, it cannot be concluded from available data that it leads to more judicial decisions or to fewer suspicious cases. It seems that the willingness of the parties concerned, from the police, to the sports movement has a much greater impact in effectively fighting against this criminal phenomenon. In fact there is a consensus that political willingness and strong involvement of the relevant stakeholders together with educative and preventive measures are the key factors to make this fight more successful. No doubt, some progress has been achieved in recent years. However, the fight against match-fixing is yet to become a priority all over Europe. At the same time, in theory an ad hoc offence targeted at sport fraud could better address the uncertainties posed by existing legislation and facilitate prosecution overall. In this sense, the opinion of prosecutors cannot be disregarded. A specific offence, they often comment, could facilitate their work and would encourage investigations.

The majority of stakeholders consulted for this research agreed on the fact that major obstacles in prosecuting cases of match-fixing are operational rather than legal: difficulties in getting sufficient evidence for criminal charges, lack of expertise, low level of awareness or no political willingness are some of the barriers mentioned to undertaking legal proceedings.

The development of the European dimension in sport by promoting fairness in sporting competitions as well as the physical and moral integrity of sportsmen and sportswomen is one of the objectives of the European Union in the field of sports (ex art. 165 TFEU). Moreover, the Lisbon

Treaty has granted the EU more substantial competences in criminal matters. In this context, the EU is called to have a leading position in the fight against match-fixing by supporting and taking an active role in the negotiations towards an international instrument set up by the Council of Europe to combat match-fixing, by requiring the European Member States to ensure that their criminal legislation is effective in coping with major forms of match-fixing and by calling on the sport organisations to enforce disciplinary rules. Moreover it should make the most of the existing instruments to facilitate transnational cooperation in criminal matters (i.e. Eurojust, EUROPOL) and promote the exchange of experiences and better cooperation among agents involved.

These and other recommendations are further developed in the KEA's study "Match-fixing in Europe- A mapping of criminal law provisions in EU 27", available on [http://www.keanet.eu/docs/study-sports-fraud-final-version\\_en.pdf](http://www.keanet.eu/docs/study-sports-fraud-final-version_en.pdf)

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KEA is the author of numerous studies for European institutions, among them the benchmarking study Sport Agents in the European Commission (2010). Also, KEA leads an international consortium to carry out research on economic and legal aspects of transfer of players to be finished by the end of the year.

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