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Time to act: Europe's political response to fighting the manipulation of sports competitions

Report¹

Committee on Culture, Science, Education and Media

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A. Draft resolution²

1. Sports integrity is living a decisive moment of history, due to the recent coming into force of the Council of Europe Convention on the manipulation of sports competitions (Macolin Convention, CETS 215) and the imminent setting up of its Follow-up Committee in June 2020.

2. Council of Europe member States must adopt relevant laws and sanctions to uphold sports competition integrity against manipulations and provide awareness programmes and training in sports ethics and integrity, to make sure that every athlete, or coach and competition stakeholder understands the principles of fair play, and knows how to recognise, resist and report manipulations of sports competitions. However, the Assembly recalls that the manipulation of sports competitions is a global phenomenon of organised crime often involving money laundering, corruption, bribery or illegal betting, and it can only be tackled effectively through a common political commitment and legally binding international cooperation in the fields of information exchange, data protection, law enforcement and criminal justice.

3. The Assembly deplores that in five years only 6 member States of the Council of Europe have ratified the Convention, 32 other states have signed but not ratified and 21 of the signatories have delayed the ratification process being entangled in the European Union internal decision-making procedures. Andorra, Bosnia & Herzegovina, Czech Republic, Ireland, Malta, Monaco, North Macedonia, Romania, Sweden and Turkey have not signed the Convention.

4. Many governments have taken concrete measures and are making significant efforts, which are to be praised. To date 32 national platforms are operational, despite several without a formal framework; many countries have updated their legislation to comply with the Convention and co-operation through informal networks is active. However, the Assembly considers that sport integrity matters remain generally low on the political agenda; this has not helped terminate the continuing institutional deadlock imposed by Malta over the definition of "illegal sports betting" within the Convention. The Assembly finds no justification to Malta's position other than deliberately obstructing its entry into force, whether by legal manoeuvres, attempts to modify the Convention or simply to delay the necessary reforms in the country itself.

5. This stalemate situation continues to generate discomfort within the EU institutions and among EU member States. The Assembly welcomes the recent conclusion of the meeting of the Council of the EU sports ministers in which the latter agreed to "examine ways to solve the deadlock with regard to the Macolin Convention, in view of enabling the EU and all its member States to complete their respective ratification processes and accede to the Convention as soon as possible".

¹ Reference to committee [Doc. 14518](#), reference 4384, dated 01 June 2018.

² Draft resolution adopted unanimously by the committee on 15 May 2020.

6. The Assembly denounces the new attempt by Malta to amend the definition of “illegal sports betting” within the Convention under the provisions of its Article 38 as yet another tactic to win its cause and to neutralise the existing definition, thereby significantly weakening the system established by the Convention. The Assembly expresses its opposition to any move leading to amending the Convention shortly after its entry into force. It recalls that amendments to a convention, if any, should build on the experience gained through its implementation and be aimed at strengthening the system and at ensuring its consistency with evolving situations, but certainly not at weakening it. Requesting an amendment would paralyse the effective implementation of the Convention. In addition, it would challenge the Council of Europe treaty-making process and set an unfortunate precedent, which could pave the way to other possible challenges against new Council of Europe conventions after their adoption.

7. The Assembly is concerned that the prolonged deadlock seriously hampers advancing on many issues that require urgent international attention, including introducing stricter responsible sports betting regulations. It also undermines the setting-up of effective data exchange, judicial cooperation and intelligence sharing mechanisms, and it curtails the possibility to deal effectively with key issues related inter alia to transparency and conflict of interest, and to prevent abuses of a position as sponsor, data provider, integrity service provider or part-owner of a sports club or competition stakeholder to facilitate the manipulation of a sports competition or to misuse inside information.

8. Many long-term challenges remain for public authorities in addressing the manipulation of sport competitions in order to grasp the complex nature of the issues and effective approaches to combat associated crime, corruption and money laundering, working closely with others. It requires aligning sports, sports betting and national law-enforcement and judicial bodies in a collective, coherent and co-ordinated effort to tackle corruption and malpractices in sport, and for sports betting operators and regulators to design and implement concrete actions to prevent and deter those seeking criminal practices. The time to act is now. Further delays will only benefit criminal networks and undermine the values of sport, which will also jeopardize the values of democracy, the rule of law and human rights. This is particularly dangerous in the present context given the drastic impact of the Covid-19 on the financial sustainability of sports, which carries a high risk of further expansion in money laundering, illegal betting and manipulation of sport competitions.

9. In light of the above, the Assembly calls on the Council of Europe member and observer States,

9.1. as regards the ratification of the Macolin Convention, to:

9.1.1. sign and ratify the Convention without further delay, if they have not yet done so;

9.1.2. refrain from any actions that could result in weakening any provisions of the Convention and intergovernmental co-operation it promotes;

9.1.3. in particular, in the case of Malta, stop seeking new avenues to amend the definition of “illegal sports betting” enshrined in the Convention and sincerely aim at joining it to defend its positions as a fully-fledged member from within the Follow-up Committee;

9.2. as regards the implementation of the provisions of the Convention, ante or post ratification, to:

9.2.1. building upon the Macolin Roadmap, keep under review or undertake an assessment of the major threats emerging from the different types of sports manipulation in order to set key priority areas and a strategic roadmap to support the formal implementation and activity of national platforms;

9.2.2. allocate proper resources in order to make sure that national legislation on manipulation of sports competitions is effectively enforced, taking active and meaningful steps to withhold partially or all public funding from any sports organisations that do not effectively implement prevention and training programmes or apply regulations for combating manipulation of sports competitions;

9.2.3. widen the outreach and assistance provided to sport governing bodies in order to develop awareness, prevention, education and training for a wide range of participants and competition stakeholders from grassroots sport to high performance levels;

9.2.4. work with the Council of Europe Secretariat and the Convention’s Follow-Up Committee to ensure national sports and sports betting integrity strategies and action plans are shared, are in line with the Convention and are feeding the activities that support the implementation of the Macolin Convention.

10. The Assembly urges the European Union institutions to look for a rapid solution to remove the obstacles preventing EU member States to ratify the Convention so that its Follow-up Committee starts operating with a maximum of States Parties. To this end, it hopes that the European Union Chairmanship could put the issue of the ratification of the Macolin Convention on the agenda of a forthcoming COREPER I meeting, and that the European Parliament will be active in supporting a positive outcome.

11. The Assembly recalls that national parliaments have a key role to play in adopting legislation and exercising oversight over government activities, and notably in cross-border and cross-sectorial policy areas. It therefore calls upon members of relevant committees of national parliaments:

11.1. in particular of the 31 states whose governments have signed the Convention, to encourage a speedy ratification of the Convention;

11.2. of the countries that have not signed the Convention, to request the reasons for the delays or obstacles of their governments to signing the Convention and encourage them to sign.

B. Draft recommendation³

1. Referring to its Resolution (2020) on Time to act: Europe's political response to fighting the manipulation of sports competitions, the Parliamentary Assembly wishes to flag the urgency to fight the ever expanding and thriving organised crime, money-laundering and illegal betting in sport, which are increasingly used by international criminal networks behind the manipulation of sports competitions at all levels and fields. Indeed, these criminal networks profit from uncontrolled betting markets, a weak culture of governance and compliance by sports governing bodies, loopholes in national legislations, and the absence of wider and stronger international data exchange and judicial cooperation able to counter them.

2. The Assembly underlines that the Council of Europe Convention on the Manipulation of Sports Competitions (Macolin Convention, CETS 215) is a unique worldwide tool providing a comprehensive framework for collectively fighting sports betting related criminal risks. Its implementation is of pivotal importance for keeping sport safe, credible and based on fair play.

3. The Assembly remains seriously concerned, however, that one single member State has managed to slow down the ratification of the Convention by using its de-facto veto powers within the Council of the European Union to block other EU member States from becoming party to the Convention. It recalls the long-standing practice of inclusiveness and participation, on an equal footing, of all Council of Europe member States in the drafting, implementation and monitoring of the Organisation's treaties. It therefore calls on the Committee of Ministers:

3.1. to encourage all member States who have so far not done so, to ratify the Macolin Convention as urgently as possible;

3.2. to allocate sufficient human and financial resources in order to extensively advocate, communicate and support the launching of new relevant convention-based and intergovernmental activities in which member States should be able to participate on an equal footing;

4. The Assembly reiterates its concern already expressed in its Recommendation 2114 (2017) on defending the acquis of the Council of Europe: 65 years of successful intergovernmental co-operation and standard setting, pointing to the fact that the reality of post-Lisbon EU competences is not reflected in the Council of Europe Statute, rules of procedure of the Committee of Ministers or of intergovernmental committees, which creates regular tensions, questions and need for legal opinions. Bearing in mind that transparency and dialogue are fundamental to effective cooperation, the Assembly invites the Committee of Ministers:

4.1. to update its texts which do not reflect the reality of EU competences, in particular the CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods, and the Committee of Ministers rules of procedure;

4.2. to draft a common agreement with the European Union which could reflect the general principles of the participation of the European Union in the Council of Europe conventions, which could set out the applicable principles and provide for general operating rules such as voting rights, speaking rights, reporting and financial arrangements;

5. The Assembly appeals to the Committee of Ministers not to open discussions on the amendment of any provisions, under Article 38, of the Macolin Convention.

³ Draft recommendation adopted unanimously by the committee on 15 May 2020

C. Explanatory memorandum by Mr Büchel, rapporteur

1. Introduction

1. The manipulation of sports competitions not only constitutes a major threat which tarnishes the reputation of sport and curtails sport values but has also become a dangerous playground for transnational organised crime, including feeding terrorism. Strong political will and efficient tools are needed to fight against it in a serious and comprehensive manner.

2. Over five years have passed since the Council of Europe Convention on the Manipulation of Sports Competitions (CETS 125, 2004; hereafter the Macolin Convention⁴) was opened to signature and ratification. To date only seven member States - Norway (2014), Portugal (2015), Ukraine (2017), Moldova (2019), Switzerland (2019), Italy (2019) and Greece (2019)⁵ - have ratified the Convention; 31 countries have signed it, including a non-member State, Australia. However, 10 member States⁶ have so far ignored the Convention for one reason or another.

3. The ratification process has been seriously hampered by Malta's veto on the European Union's ratification because of a contested definition in the Convention, which hits on its national interest in gambling revenues.

4. This years-long deadlock situation must come to an end. The Convention entered into force on 1 September 2019 and the Follow-up Committee will soon start functioning as the monitoring body within its agreed mandate and scope of action. This makes it ever more important to actively promote its ratification and implementation, as a necessary step to uphold sports integrity and ethics. Together with many stakeholders, I believe there are no valid legal grounds under EU law to Malta's veto. The matter is purely political and needs a political response.

5. On 21 November 2019, the EU Council meeting of sports ministers agreed to "*examine ways, together with the Commission, to solve the deadlock with regard to the Council of Europe Convention on the Manipulation of Sports Competitions, which entered into force on 1 September 2019, in view of enabling the EU and all its Member States to complete their respective ratification processes and accede to the Convention as soon as possible*". I welcome this development and hope it will be followed by concrete steps.

6. The time to act is now: be it for the European Union, its individual member States, or the remaining 16 member States of the Council of Europe who are not bound by the EU standstill and whose representatives voted unanimously for the Assembly's Resolution 1876 (2012) on the need to combat match-fixing, which cautioned not to regard match-fixing as a minor offence and called for the "*introduction of a binding international legal instrument and of a stable co-operation platform to preserve sport's integrity and values?*".⁷

7. Unfortunately, the deadlock within the EU is also diverting attention from a number of matters of utmost urgency that require swift collective targeted action of the various stakeholders involved, such as the need for introducing a robust and trustworthy sports betting integrity regulatory framework, creating efficient and legally binding data exchange and intelligence sharing mechanisms, developing effective protected reporting systems in sport or settling the various issues related to transparency and conflict of interest.

8. In the chapters below, I intend to analyse the severe consequences that any further delays in finding an institutional solution within the EU bodies might bring, and to propose various avenues for consideration by both the EU and the member States. Furthermore, I endeavour to look beyond the ratification of the Convention and suggest some lines of action for the various stakeholders.

9. In the course of preparing this report, I held three committee hearings and carried out two fact-finding visits: to Switzerland in May 2019 and to Brussels and Strasbourg in February 2020. I wish to thank all the organisations and persons I met during those visits, and in particular Ms Mariya Gabriel, Commissioner for

⁴ https://www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/215/signatures?p_auth=3JyI3Wbo.

⁵ The Hellenic Parliament ratified the Convention in November 2019; however, at the time of drafting the ratification instrument is still being prepared in the Ministry of Foreign Affairs.

⁶ 10 member States have neither signed nor ratified: Andorra, Bosnia & Herzegovina, Czech Republic, Ireland, Malta, Monaco, North Macedonia, Romania, Sweden, Turkey.

⁷ Between 2008 – 2014, the Parliamentary Assembly adopted three match-fixing related resolutions and opinions: Resolution 1602 (2008) on the need to preserve the European Sports Model, [Resolution 1876 \(2012\)](#) on the need to combat match-fixing and [Opinion 287 \(2014\)](#) on the draft Council of Europe convention on the manipulation of sports competitions.

Innovation, Research, Culture, Education and Youth; Mr Alexander Čeferin, President of UEFA, Mr Andreas Zagklis, Secretary General, International Basketball Federation (FIBA); Mr Vangelis Demiris, Cabinet member of Mr Margaritis Schinas, Vice-President of the European Commission for Promoting our European Way of Life; Ms Thérèse Blanchet, Director General of Legal Service of the Council of the EU; Mr Lucio Gussetti, Director of the Legal Service of the European Commission and Mr Yves Le Lostecque, Head of Sport, DG for Education, Youth Sport and Culture of the European Commission, and Mr Matthias Remund, Director of the Swiss Federal Office of Sport, for their open and constructive discussions.⁸ I also wish to thank the many experts who took part in the committee hearings.⁹ Finally, my special gratitude goes to Ms Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe for her continuous institutional support, and to Mr João Paulo Almeida, Olympic Committee of Portugal, Mr Philippe Vlaemminck, Pharumlegal, Mr Jörg Polakiewicz, CoE Director of Legal Advice and Public International Law and the team of the CoE Children's Rights and Sport Values Department for their valuable contributions to drafting this report.

2. Lack of political response to the growing threat

10. Cheating in sport and manipulation of sport competitions have existed since the dawn of times¹⁰ and have been embedded in the world of sports ever since. It is the advent of new technologies and expansion of the online sports betting market along with widespread betting opportunities, regulatory vulnerabilities and low awareness within a booming sports market that have heralded a new and increased dimension to this threat through illegal betting markets and organised crime.

11. Betting-related competition manipulation is a huge menace to sports integrity. Today it directly implicates organised crime and increasingly transnational criminal networks. According to Europol, betting and money-laundering related sports corruption is among the main illegal activities of criminal groups. All main organised criminal groups in Europe¹¹ have illegal activities in the betting and sport sectors.¹² It is estimated that 82% of global sports bets are illegal¹³ and more than 80% of those operators that do have a licence, are licensed in low-oversight gambling havens – in Europe, many in Malta.

12. Sports betting is not to blame per se. Nor is the possibility to place bets worldwide allowing people to engage in real-time betting in competitions held anywhere across the globe to be condemned. What is of concern is the rapid proliferation of the illegal and sometimes suspicious online betting operators (though formally legal) mostly licensed by weakly regulated gambling havens operating on a cross-border basis in jurisdictions where they have no license; and this phenomenon makes the manipulation of sports competitions the biggest single threat to the integrity of international sport.

13. The above, coupled with a number of weaknesses in the governance of sport, cooperation between public authorities, the sports movement and betting operators and fragile regulation of sports betting markets in many jurisdictions, has opened enormous opportunities for potential low risk and high-profit gains. Online

⁸ My gratitude also goes to Mr Alberto Colombo, EPFL; Mr Friedrich Martens, IOC, Mr Evangelos Alexandrakis, GLMS; Mr Patrik Eichenberger, COMLOT; Mr Georges Lüchinger, Sport Council, Advisory body of the Government of the Principality of Liechtenstein, FIFA Integrity and Communications teams, Mr Eric Herren, SportXray and Mr Marcello Presilla, Sportradar whom we met in May 2019 and to members of the European Parliament Sport(Inter)Group, Ms Heidi Sulander, Permanent Representation of Finland to the EU, HE Ambassador Urs Bucher, Mission of Switzerland to the EU and Mr Alvis Angelini, whom I met in February 2020. The latter visit could not have been possible without the efficient assistance of Mr Zoltan Taubner and Mr Humbert de Biolley from the CoE Office in Brussels.

⁹ In June 2018: Mr Harri Syväsalmi, Finnish Centre for Integrity in Sports; Mr Friedrich Martens, IOC, and Mr João Paulo Almeida, Olympic Committee of Portugal (also in October 2019); in June 2019 Mr Philippe Vlaemminck, Pharumlegal, and Mr Christian Kalb, CK Consulting; in October 2019: Mr Vincent Ven, FIFA; Mr Claudio Marinelli, Interpol; Mr Corentin Segalen, ARJEL and Mr Giancarlo Sergi, Secretary General, GLMS.

¹⁰ The earliest cases of match-fixing date back to the 98th Olympiad. Fraud and endemic corruption have been considered as key issues to the collapse of the Ancient Olympic Games. Mr Pierre de Coubertin is quoted to have said in 1908 that "fair play" was "in danger; and it is above all because of the development of this cancer that has been imprudently allowed to spread: the madness of [...] gambling". The following is reported in Moriconi, M. and Almeida, J.P., "New opportunities for criminal networks: How digital technologies are transforming the betting industry in a globalized sports arena", published in *Codice e luoghi : Abitare le relazioni nel reale-digitale*, 2019 <http://www.meltemieditore.it/catalogo/codice-e-luoghi/>.

¹¹ Italian mafia (particularly 'Ndrangheta, Cosa Nostra and Camorra), Chinese triads, Russian/Georgian groups, and also British and Dutch criminal groups (of various ethnic origins), and others from Turkey, the Balkans and North Africa.

¹² European Commission/ IRIS (the French Institute for International and Strategic Affairs), Preventing Criminal Risks Linked to the Sports Betting Market, 2017, p. 13:

https://www.iris-france.org/wp-content/uploads/2017/06/PRECRIMBET_2017_FINAL.pdf.

¹³ European Commission/ IRIS (the French Institute for International and Strategic Affairs), Preventing Criminal Risks Linked to the Sports Betting Market, 2017,

https://www.iris-france.org/wp-content/uploads/2017/06/PRECRIMBET_2017_FINAL.pdf.

betting allows operators a great degree of anonymity, notably the Darknet, and the ability to swiftly move operations from one regulatory regime to another if pressure is applied by the authorities. It is relatively cheap and simple to set up a betting website, providing a perfect means to both fund other criminal enterprises and to help launder the proceeds.¹⁴

14. The profits are enormous: the amount wagered illegally on sports betting varied between 340 billion and 1,7 trillion USD in 2017.¹⁵

15. Betting and betting-related manipulation of competitions is also expanding across sports – whereas only a decade ago, football took 98% of the bets, today a huge number of betting operators offer bets on more than 50 different sports, with football representing only 65% of the betting market.¹⁶ Football, tennis and cricket have traditionally been the target fields of competition manipulation; however, today basketball, handball, ice hockey and volleyball and increasingly also competitions with minors and many other sports (table-tennis, badminton, hockey, snooker, e-sports, etc) appear to be in the radar of fixers.

16. The same expansion is also reflected in the alerts on suspicious betting activities. The GLMS statistics reveal that of the 579 alerts concerning Europe in 2019, football received 450, basketball 62, ice hockey 22, tennis 16, volleyball 5, handball and table tennis 4, e-sport 3 and badminton 2.¹⁷ These are just some figures that show the magnitude of the problem today. No country could fight alone against this expanding phenomenon.

17. However, the manipulation of sports competitions is not only international or betting-related; it touches absolutely every level of sports practice – from grassroots to high performance level – in multiple forms. Therefore, as laid down in the preamble of the Macolin Convention, public authorities have a responsibility to protect the integrity of sport and for that purpose make sports organisations, governmental bodies, law enforcement, prosecutors, betting operators and data providers work closely together in order to prevent, detect, and prosecute perpetrators and offenders. This is a huge and complex task – as much at local and national as at international level.

18. Given the enormous financial flows feeding corruption and crime, and considering the magnitude of the risks it represents to society and to sport, the fight against the manipulation of sports competitions - including organised crime infiltration into the sports sector and all the threats that this entails to public order, gambling consumers as well as responsible betting, must be considered a priority issue both at national and international level, for it concerns the very fabric of sports values. If these values are undermined, they also undermine the values of the European societies: democracy, the rule of law and human rights.

3. Challenges to the ratification of the Macolin Convention

19. The Macolin Convention is definitely the most advanced and comprehensive international-level initiative to meet the challenges of fighting sports-betting-related criminal risks. It aims to prevent, detect and sanction competition manipulation as well as to improve information exchange, national and international cooperation between relevant stakeholders involved in sport and in sports betting, whistle-blowers protection, education and prevention, capacity building, conflict of interest measures against illegal sports betting, robust reporting systems, etc. Its implementation will be of pivotal importance for keeping sport safe, credible and socially valued, and yet, its ratification process has seen a succession of difficulties.

20. These difficulties stem at least in part from objective elements of complexity, such as the need for the involvement of numerous stakeholders, considerable human and financial resources, substantial legislative amendments, setting-up national platforms and mechanisms that would guarantee the implementation of its provisions. The pressures from the lobby of betting operators was probably an additional obstacle. However, it is clear that Malta has to date been successful in preventing more than half of the member States of the Council of Europe, through the interpretation of the EU internal regulations, from joining a treaty duly adopted under the Council of Europe Statute. This is a challenge for the co-existence of the European Union *acquis*

¹⁴ Illegal betting in an Asian context, Anti-Illegal Betting Taskforce, Asian Racing Federation, September 2018 <http://www.asianracing.org/uploadmedia/ARF-AIBTF-White-Paper---Illegal-Betting-in-an-Asian-Context.pdf>.

¹⁵ Ibid, op cit, p.9.

¹⁶ Moriconi, M. and Almeida, J.P., “New opportunities for criminal networks: How digital technologies are transforming the betting industry in a globalized sports arena”, published in *Codice e luoghi : Abitare le relazioni nel reale-digitale*, 2019 <http://www.meltemieditore.it/catalogo/codice-e-luoghi/>.

¹⁷ GLMS 2019 Monitoring and Intelligence Report, p.8. In comparison, in 2018, GLMS had sent 459 alerts: football 359, basketball 45, tennis 18, ice hockey 17, handball 10, volleyball 5 and badminton, cycling, e-sports, rugby and hockey 1.

and the Council of Europe's unique treaty-based system. We need to find the right answer to this challenge, also in the spirit of the institutional cooperation that the 2007 Memorandum of Understanding between the Council of Europe and the EU is intended to promote.

3.1. Malta's blocking position

21. Malta, whose economy is heavily dependent on betting revenues, claims that the definition of "illegal sports betting" goes beyond the scope of the Convention and does not contribute to the fight against match-fixing. At the EU level, it also argues that, contrary to the overwhelming caselaw of the Court of Justice of the European Union (CJEU), betting services should benefit from free movement under the Internal Market rules whereby a service licensed in one member State should be accepted in all others. However, it is perfectly clear from the jurisprudence of the CJEU that the principle of mutual recognition is not applicable in this area.

22. Article 3.5.a of the Convention defines illegal sports betting as "*any sports betting activity whose type or operator is not allowed under the applicable law of the jurisdiction where the consumer is located*". This definition indeed bears consequences to the Maltese gaming sector, since the majority of Maltese-registered online gaming companies take bets in a wide variety of countries.

23. There is an international consensus on the fact that betting companies that want to operate legally cannot disregard the legislation of the jurisdiction where their customers are located. However, Malta challenged this principle at all stages of the preparation of the Convention. At its adoption by the Committee of Ministers, Malta requested a vote and was outvoted. Thereafter, it filed in July 2014 a request for opinion with the CJEU under article 219 (11) of the Treaty of the Functioning of the European Union (TFEU) with a view to clarifying whether the Convention and in particular the definition of "illegal sports betting", read in conjunction with the Convention's betting provisions (articles 9 and 11), was compatible with the EU Treaties. It withdrew this request a year later arguably in anticipation of an unfavourable CJEU ruling. The case law of the CJEU includes over 40 preliminary rulings on gambling, which support that this definition does not cause any issue under European law. The problem is not a legal but a purely political one, and it needs to be handled as such. The Council of Europe Convention is legally neutral, and the vested interests of one single member State should not prevail on the general interest, common to all the others.

24. After the change of government in Malta and having received some indication of a possible new openness of the Maltese authorities to end the deadlock, I met on 29 January 2020 with the Maltese Permanent Representative to the Council of Europe in Strasbourg, Ambassador Joseph Filletti. I received no indication that Malta was considering lifting the current veto at the Council of the EU. However, Ambassador Filetti confirmed that the Maltese authorities were preparing a new proposal, which they intended to submit to the competent Group of Rapporteurs of the Committee of Ministers (i.e. the GR-C) for consideration. This discussion took place on 10 March 2020.

25. The Maltese authorities' suggestion would be to amend the Convention to "clarify" the definition of "illegal sports betting" following the procedure of article 38 of the Convention,¹⁸ once the Follow-up Committee has assumed its functions. To date, Maltese authorities have not communicated a precise text to me or to the Committee of Ministers. However, the idea - as explained orally - would be to state that, for the purposes of the Convention, an illegal sports betting activity is one that is related to the manipulation of sports competitions.

26. I believe it would be anomalous and unwise to open a procedure under article 38 of the Convention just shortly after the coming into effect of the latter and even more so on an issue that was amply debated during its negotiation. Amendments to a convention, if any, should build on the experience gained through its implementation and be aimed at strengthening the system and at ensuring its consistency with evolving situations, but certainly not at weakening it. Instead, any text following the Maltese approach would deactivate the existing definition of illegal sports betting and significantly weaken the system established by the Convention, voiding *de facto* its art. 11 and reducing considerably the scope of the exchanges of information referred to by articles 9.1 a) and 12.3. Indeed, it would make the enforcement of criminal laws of other member States dependent on the proof of a "manipulation", thus counteracting any national legislation prohibiting (certain forms of) betting to protect public order or consumers and hampering the possibility for member States to implement effectively their own gambling laws and policy.

¹⁸ Article 38.1 provides that "*Amendments to articles of this Convention may be proposed by any Party, the Convention Follow-up Committee or the Committee of Ministers of the Council of Europe.*" Article 38.3 indicates that "*The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Follow-up Committee and may adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe.*"

27. Furthermore, engaging in a formal amendment procedure could lead some States to suspend the ratification process thus curtailing a positive dynamic that was difficult to initiate. This would paralyse the effective implementation of the Convention and, in addition, set an unfortunate precedent, which would challenge the decision-making process of the Council of Europe, create an imbalance between EU and non-EU member States and pave the way to other possible challenges against new Council of Europe conventions after their adoption. This is not acceptable.

28. I recall here the Assembly's Recommendation 2114(2017) on "Defending the *acquis* of the Council of Europe: preserving 65 years of successful intergovernmental co-operation"¹⁹ which ends with the call on Council of Europe member States "*to abstain from any voluntary action which would result in the weakening of the intergovernmental co-operation which has contributed so much for many decades to effectively uniting the European continent*".

29. That being said, I must recognise the positive steps the Maltese government and parliament have taken in the fight against the manipulation of sports competitions. In 2019, following the entry into force of the "Prevention of Corruption in Sport Act" in the previous year, the Maltese Parliamentary Secretariat for Sport decided to unify the approach to integrity in sport by creating a single agency as of 2021 to deal with anti-doping, anti-match-fixing, legislation and investigation and policy and education. This new body will also represent Malta in the Group of Copenhagen, which I read as a positive sign of the Maltese authorities towards the ratification of the Convention.

3.2. The positions of the EU institutions

30. At the EU level, the main obstacle to ratification is not a regulation that can be amended, but a pending decision of the EU Council, which is blocked following a legal opinion by the EU Council legal services.

31. The Macolin Convention is considered as a "mixed-competence treaty", which involves some "exclusive EU competences"²⁰ and some "shared competences"²¹ and upon these grounds should be ratified by both the EU and the EU member States. The EU Council is expected to authorise the European Union to sign the Convention.

32. Due to a duty of loyal co-operation, stemming from Article 4(3) of the Treaty of the European Union (TEU), the EU member States should refrain from ratifying the Convention until an agreement is found on an EU signature. A controversial legal opinion by the EU Council legal services (2015) reportedly concludes that the decision to allow the EU to sign mixed-competence treaties requires a "common accord" i.e. a unanimous consent of all member States to be bound by the Convention with respect to their national competences before the Council could proceed with the adoption, by a qualified majority, of decisions concerning the Union. This is what Malta has been arguing about.

33. Most EU member States are not ready to ignore this legal opinion or to overrule it. Nor have any of the member States, the Commission or the European Parliament been ready to seek an ultimate clarification from the CJEU in this specific case. They are now waiting for the CJEU Opinion on the Council of Europe Istanbul Convention requested recently by the European Parliament to clarify the question on the conclusion of a mixed competence treaty and the application of a common accord requirement.²² All the same, member States appear to be annoyed by Malta's blocking of the ratification of the Convention. Nonetheless, from an institutional perspective, owing to this requirement of unanimity, they feel enabled to prevent the signature by the EU of a mixed-competence treaty proposed by the Commission.

34. The relevant case law of the CJEU has held that the adoption of a decision authorising the Commission to negotiate a multilateral mixed-competence agreement on behalf of the EU marks the start of a concerted EU action at international level. As soon as a matter is discussed within the EU institutions, the member States are obliged to refrain from acting individually.²³ However, there are also strong arguments against this position.

¹⁹ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24212&lang=en>.

²⁰ On matters of exclusive competence, if no EU position can be adopted, the MS can simply not act at all.

²¹ The MS have more flexibility in areas of shared competence. There is a duty of prior coordination, but the option of individual MS action is not totally excluded. If the Council does not succeed in adopting a common position of the Union and its MS, the representatives of the MS retain their freedom to express their position on the matter concerned, as long as this does not conflict with the EU *acquis*. An MS must try to find common ground with the Council, but if this is not successful, it is entitled to act alone.

²² Pursuant to Article 219(11) TFEU (1/19), this opinion would help clarify whether Article 218(6) TFEU is compatible with the Treaties in the absence of mutual agreement between all member States. See the submission in the Official Journal of the EU, C413/19, 9 December 2019.

²³ S. Judgment of 2 June 2005, Commission v. Luxembourg, C-266/03, par. 60.

Advocate General Maduro in the case of *Commission v. Sweden* C-246/07 stated that member States “*must not be caught in a never-ending process, in which a final decision by the Union is postponed to the point of inaction. If that proves to be the case, a decision should be deemed to have been taken and MS should be allowed to act*”.

35. The EU Commission disagrees with the “common accord” approach of the Council and deems that the decision should be taken by a qualified majority, as specified in Article 218(8) TFEU, which provides that the EU Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement. Article 218(6)(a) TFEU provides that, where an agreement “*covers fields to which the ordinary legislative procedure applies*”, the Council shall adopt a decision concluding the agreement after obtaining consent of the European Parliament. The Convention on the Manipulation of Sports Competitions covers fields to which the ordinary legislative procedure applies.²⁴ In this respect the Council decision on conclusion should be subject to qualified majority voting pursuant to Art. 218(8) TFEU.

36. In simplified terms, it appears that both EU institutions agree on using a qualified majority for voting on the EU’s accession to the Macolin Convention; however, the Council requires the prior consent of all its member States bound by the Convention and the Commission would recommend a direct qualified vote.

3.3. Possible avenues to end the EU stalemate

37. It is not my role to take a stand on the EU applicable provisions and their interpretation. However, from a political perspective, I would suggest that an arguable legal solution should be preferred to an alternative legal approach which leads to a stalemate benefiting only one EU member State. With the coming into force of the Convention and the imminent launch of the Follow-up Committee in autumn 2020, the European Union has every interest to break the deadlock and accelerate the EU accession to this Council of Europe treaty. I believe this would be the right course of action and hope that this will be their decision.

38. If, however, no breakthrough is found quickly enough with Malta, we should strongly encourage other EU member States to follow the example of Portugal, Italy and Greece and to ratify the Convention without waiting for a positive decision from the Council of the EU. It may be argued that in the case of treaties involving shared competences that are “inextricably linked”, the duty of loyal cooperation would entail that neither the EU nor its member States can go ahead individually and become a party. Indeed, this is the foundation of the deadlock situation that Malta wishes to maintain; however, the practice in this area does not seem to be univocal. The Commission could in theory open an infringement procedure against those countries which could decide to go for the ratification; but it has no good reason to do so. The Commission does not seem in favour of the stalemate, it has not reacted when Portugal decided to ratify and have not deemed appropriate to do it after the ratification of two other EU member States. As far as I am aware, a growing number of governments are considering bypassing the EU Council decision and ratifying the Convention. If a few more EU countries would take that decision, I trust that many others would follow suit.

3.4. Co-existence of the Council of Europe treaty-making procedures and the European Union *acquis*

39. The persisting stalemate inevitably evokes the question of the EU participation in Council of Europe treaties. Under the 2007 Memorandum of Understanding, the Council of Europe and the EU have developed a “strategic partnership” based on three pillars: political dialogue, co-operation projects and legal cooperation. The MoU recognises that “*legal cooperation should be further developed with a view to ensuring coherence between European Union law and the standards of Council of Europe conventions*”.

40. The very nature of the EU law and its distinct legal order raises complex legal issues for any treaty-making in the Council of Europe. On the EU side, there are concerns not to compromise its own normative *acquis*, the autonomy and supremacy of the EU law and the EU’s legislative process. For the Council of Europe, it is important to preserve its long-standing practice of inclusiveness and participation, on an equal footing, of all Council of Europe’s member States in the drafting, implementation and monitoring of common European standards.

41. Due to the increase of EU competences under its Maastricht, Amsterdam and Lisbon treaties, almost all Council of Europe conventions nowadays contain at least some provisions falling within exclusive EU competence and would thereby require to be treated as “mixed-competence” treaties. To require consensus

²⁴ Article 16 TFEU (data protection), Article 82(1) and 82(2) TFEU (judicial cooperation in criminal matters), Article 83(1) TFEU (substantive criminal law), Articles 114 TFEU (establishment and functioning of the internal market), Article 165 TFEU (sports) and Article 207 TFEU (common commercial policy).

48. At the legal level:

- More than 30 National Platforms exist today. Through the so-called “Group of Copenhagen”, the Council of Europe has established an informal cooperation framework that is helping these platforms to align with the Convention provisions. However, international cooperation to enforcing law and order and taking legal action against organised crime cannot be done on the basis of informal arrangements only; it requires a binding legal framework that only the Macolin Convention can offer.
- The Convention is intended to provide a legal basis to the exchange of information (including personal data), which are crucial for effective criminal enquiries and pursuits. In the absence of ratification, a lot of useful information might become unavailable for investigation and prosecution.

49. This is a dangerous game, which plays into the camp of manipulators and criminal networks who thrive on legislative and operational loopholes and profit from the lack of a common front. Partial solutions are no solutions. The fight against competition manipulation can only be dealt with effectively if a large number of states ratify the Convention and take the necessary measures to set up strong, independent and professional multidisciplinary national platforms, proper monitoring systems, sanctioning measures, awareness and education programmes and adequate international cooperation moving from the good will of a few stakeholders working in silos to the capacity and effectiveness of an independent network system able to provide a global response to a global threat as laid down in the preamble of the Convention.

5. Moral commitment by the Council of Europe institutions

50. The much delayed coming into force of the Convention makes me wonder whether the Council of Europe have fully employed all the avenues to resolve the difficulties connected with the EU accession and pulled all efforts to spur the accession of non-EU member States to the Convention. The last Conference of the Council of Europe Ministers responsible for Sport, held in Tbilisi in November 2018, stressed “*the importance of the rapid entry into force of the Council of Europe Convention on the Manipulation of Sports Competitions*” (para 23) and invited the Committee of Ministers to “*call upon the member States that have not done so yet, to sign and ratify the Council of Europe Convention on the Manipulation of Sports Competitions*” (para 24.d.).²⁶ However, this was (and is) not sufficient.

51. We might wish to call upon the EU Council’s ministers to end the deadlock at the EU level; but our priority should be to place sport competition manipulation far higher on the political agenda of the Council of Europe itself and of its member States.

52. Our Assembly has its own role to play to reach out to lawmakers on sport manipulation issues and to raise awareness on the benefits of ratifying and efficiently implementing the Macolin Convention. This would require stronger responsibility and commitment from individual parliamentarians and parliaments, but also synergies and pooling of good practice through an inter-parliamentary forum for awareness and discussions.

53. At a committee hearing on 25 June 2019, the Deputy Secretary General of the Council of Europe, Ms Gabriella Battaini-Dragnoni, underlined that with the then 6 ratifications and another 31 signatures, most member governments had done their homework. The ball was in the camp of national parliaments who should ratify this important Council of Europe treaty. However, I fear that sport issues lie even lower on national parliaments’ agendas, being often hidden in diverse parliamentary committees and rarely getting the attention they deserve (mostly only as reaction to scandals in the media). I therefore strongly support the idea that the Parliamentary Assembly should organise an inter-parliamentary conference, bringing together the chairs and rapporteurs of all relevant parliamentary committees of national parliaments of the Council of Europe member States in order to highlight the importance of overcoming the obstacles related to the ratification and implementation of the Convention.

54. We should also bear in mind Resolution 2199 (2018) “*Towards a framework for modern sports governance*”,²⁷ which regretted that there was too little co-ordinated parliamentary action or international parliamentary partnership that would allow parliamentarians to have a credible stakeholder voice in the current debate on sports governance and integrity outside the scope of individual reports.

²⁶ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016808ec30a.

²⁷ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24443&lang=en>.

55. Time is precious. The Council of Europe should seize the momentum of the recent entry into force of the Convention and the imminent launch of the Follow-up Committee to reach out to all its member States through a strong political advocacy campaign.

56. Over the two years that I have followed this file, I have been impressed by the dedication and the amount of work that the responsible Council of Europe secretariat has put into doing the preparatory work for setting-up the structures, polishing concepts, facilitating the setting-up of national platforms, running the KCOOS+ (Keep Crime out of Sports) outreach project with different stakeholder groups. All this has been done with extremely limited human resources. I appeal to the organisation to provide adequate resources that would enable much wider advocacy and putting in place a proper communication strategy on the Convention within and beyond the organisation, carrying out monitoring under the mandate of the new Follow-up Committee and expanding the highly valued KCOOS+ project.²⁸

6. Looking beyond the ratification of the Convention

57. The Convention's Follow-up Committee will start working in autumn 2020. Albeit small in its initial composition (possibly 7 parties to the Convention), it will have to not only agree on its terms of reference and rules of procedure, but it will also have to take many bold decisions that will have a long-term effect. This committee will be the first and a unique standard-setting body to give a global response to tackle sports competition manipulation, the role which will be to resolve many pending issues through multi-stakeholder dialogue and to guide the different energies into finding innovative solutions.

58. Unfortunately, not all well-functioning National Platforms of the Group of Copenhagen will be able to participate in the work of the Follow-up Committee from the outset. Article 30.3. of the Convention grants the right to the Follow-up Committee to invite, by a unanimous decision, any State which is not a Party to the Convention, any international organisation or body, to be represented by an observer at its meetings. They will, however, participate without the right to vote. Signatory parties cannot automatically participate in the deliberations either. This highlights even more the benefit for the 31 signatory states to ratify the convention in order to fully participate in joint decisions.

59. As the leading multi-stakeholder body, the Follow-up Committee should be encouraged to go beyond its statutory functions and devise a global strategy on fighting sport competition manipulations. An effective fight against sport competition manipulation functions on the principle of connected vessels, linking several policy areas, notably betting/gambling, sport, law enforcement and data protection. These areas are normally working in silos and would rarely connect to one another. The lack of comprehensive expertise is precisely one of the reasons that has made it so difficult for countries to implement or to ratify the Convention.

60. Awareness, education and training, prevention and capacity building - from grassroots to high performance sport - have been consensually outlined by governments, experts and sport governing bodies as well as non-governmental sport associations²⁹ as priorities to safeguard the integrity of sport and protect competition stakeholders from various sorts of manipulation of sports competitions. I have identified additional areas that are not directly covered by the Convention, which appear to me to be of particular concern, without which there can be no effective fight against corruption and manipulation in sport possible. I hope these issues, as presented below, can be raised during the first encounters of the new Follow-up Committee.

61. First, the improvement of sports betting integrity regulatory policies, including responsible gambling, protection of minors and vulnerable people, protection against gambling addiction, consumer education and protection (in particular minimising misleading advertising and unfair commercial practices), preventing money laundering and the fight against crime in general, and indicating ways of how to overcome these significant challenges.

62. Several member States have recently moved forward to amend their betting and gambling legislation to impose restrictive measures to tackle these issues in several key dimensions as advertising, sponsoring, compliance with research, education and awareness on gambling related harm by licensed operators.³⁰

²⁸ New projects as EPOSM address the prevention of match-fixing: Evidence-based Prevention of Sporting-related match-fixing involves the CoE as associate partner.

²⁹ Associations as ENGSO and Panathlon are playing an important role in advocating enhanced sport integrity policies.

³⁰ For instance, Italy, UK and Spain have introduced relevant measures of safer gambling, with licensed operators committed to driving up standards, protecting vulnerable customers and reducing harm caused by problem gambling behaviours, as well as calling for a total ban on broadcast advertising by operators (Italy, UK), thus sending a strong message to the world of sport that often looks upon the sports betting industry as a mere revenue source.

However, these are national measures, which risk having considerable enforcement challenges to regulate online services that are intrinsically cross-border in nature and therefore having very limited jurisdictional reach of national regulators. The global threat needs global responses.

63. At the EU level, gambling falls under the principle of subsidiarity, which means that it is regulated at national level. Cooperation between national regulatory authorities, including on enforcement, is pursued within the framework of the Cooperation Arrangement concerning online gambling services concluded in 2015. Leading online gaming and betting operators comply with the CEN³¹ Workshop Agreement on Responsible Remote Gambling Measures (CWA 16259: 2011).³² Also, the World Lottery Association and European Lotteries (EL) have elaborated extensive corporate social responsibility (CSR) and security certification rules including responsible gaming standards. The EL has also adopted a strong ethical code on sports betting and a commitment to fund sports. Nevertheless, this remains a self-regulatory mechanism.

64. The Assembly's Recommendation 1997 (2012) on the need to combat match-fixing recommended the Committee of Ministers to study "*the possibility of harmonisation of European legislation on sports betting, taking account of the legislation and prerogatives of the European Union, and drawing up guidelines in this respect*".³³ Although overall harmonisation is in today's context not a desired option, I would suggest that our Assembly could look again into the idea of drawing up some specific guidelines on sports betting integrity.

65. The second issue of concern is that of conflict of interest. Sports integrity services play a pivotal role to monitor and alert suspicious, irregular and illegal sports betting. These services have been provided through, amongst others, a business model where commercially driven companies acquire the data rights from the sports rights holders and monetize these through substantial commercial contracts with betting operators, regulators and sport organisations, whilst using the provision of integrity services as a leverage in such a deal.

66. The opacity around this business model poses serious issues for independent and neutral integrity services demanding for more clarification and guidelines on potential conflicts of interest and misuse of inside information for these companies pursuant to article 10 of the Convention for sports betting operators, notably when integrity services represent a minor part of substantial data contracts later commercialised to a wide array of stakeholders.

67. Therefore, I strongly recommend particular remedies and guidelines towards a clear separation between sports integrity service providers and sports data and sports betting data providers.

68. My third big concern is advertising of gambling and sponsoring events or teams by gambling operators. As was said in one of our committee hearings, if the visible advertising of betting operators' logos on the outfits of sporting teams was no longer permitted, we would already see a big change in mentality. Indeed, several jurisdictions have prohibited gambling advertising, mostly as a prevention measure against addiction. Nevertheless, sports betting revenues represent a significant commercial stream for the sustainability of the European dimension of sporting development that cannot be overlooked, notably when bookmakers set partnerships to support sports. National lotteries also play a very important although often a very different role, by providing support for example with the allocation of funds to good causes.³⁴ Such support programmes should consider clear provisions to hold sport organisations and competition stakeholders accountable to deliver education and training sessions on sports integrity and apply regulations for combating manipulation of sports competitions.

69. It is a similar situation with sponsoring of sport by gambling operators which generates conflicts of interest and allows the sponsoring companies to get inside information and which can influence the teams and fans. It would be unwise to impose a full ban on sponsoring. Rather, a clever approach is needed, compelling betting operators, as lotteries already do through the ethical code on sports betting, to impose mandatory provisions on the sponsoring agreements with sports organisations on education, prevention and training on sports integrity, namely manipulation of sports competitions. These kinds of strategies would also strengthen the collaboration between these two worlds on the issue of integrity moving the current short-term financially driven relation to a broader collaborative partnership where money and revenues are not the single issue at stake.

³¹ European Committee for Standardisation.

³² <https://www.cen.eu/news/brochures/brochures/GamblingMeasures.pdf>.

³³ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18267&lang=en>.

³⁴ For example, on an annual basis, members of the European Lotteries give more than two billion Euros to sport at European level.

70. These are some tangible recommendations that the Follow-up Committee could bring up to bridge the gap between gambling and sport towards a global response to tackle competition manipulation as a major threat not only to sport but also to sports betting integrity and vulnerable protection.

7. Conclusions

71. This report would not be fair without acknowledging the numerous achievements that both individual countries and the multi-stakeholder cooperation have already made in the spirit of the Convention. Examples include collaboration in the KCOOS+ and the Group of Copenhagen (GoC) of National Platforms, which has grown from 6 initially participating countries in 2016 to 31 today. The Memorandums of Understanding signed with FIFA and UEFA have also strengthened co-operation with sports governing bodies in this area. A particular mention in this context should be made of the FIFA Women's World Cup France 2019™ (FWWC): an unprecedented number of stakeholders took part in the "FWWC Integrity Taskforce" in order to closely cooperate and protect the integrity of the FWWC. Under the auspices of FIFA, the Council of Europe, the GoC, Interpol, law enforcement agencies, betting regulators, all relevant French authorities, Interpol, Sportradar, GLMS participated in this taskforce. I hope that a similar multi-stakeholder setup will also be applied to monitor the UEFA EURO2020 in autumn 2020.

72. I hope to hear the above-mentioned organisations, the IOC and other partners, including non-profit associations, advocate the Convention at every possible occasion within and beyond the European borders, and to see that no bid to host a major sporting event is granted to a country that does not abide by the provisions of the Convention or to a sports federation that does not live up to the new IOC Olympic Movement Code on the Prevention of the Manipulation of Sport Competitions.

73. However, our partners need public authorities to be fully on board. The problems of infiltration of organised crime into sport and betting related manipulation of sport competitions are wildly expanding and any further delays just contribute to aggravate the problems. The Convention has entered into force and the Follow-Up committee will be established soon: it is time to act now.

74. Malta should stop seeking new legal nuances and sincerely aim at joining the Convention to defend its positions as a fully-fledged member from within the Follow-up Committee.

75. I would urge the European Union institutions to put the ratification of the Convention higher on their political agendas. The EU Council should take a bold political decision to proceed with a direct vote on the ratification by a qualified majority. In parallel, we should encourage the EU member States to ratify without delay and join the Follow-up Committee from its outset. This is the right way to concretise the commitment that all of them had expressed throughout all the drafting process and with the adoption of the Convention.

76. Also, the Council of Europe statutory bodies must place the issue much higher on the political agenda, starting by dedicating at least part of the forthcoming 16th Conference of Ministers responsible for Sport in November 2020 on underlining the swift ratification of the Convention and investing appropriate financial and human resources into advocacy and a proper communication policy for the Convention. Furthermore, the Committee of Ministers should be urged to come back to the issue of a European Union – a Council of Europe Memorandum of Understanding on the participation of the European Union in Council of Europe conventions, as recommended by the Assembly in 2017.

77. Our Assembly should contribute to the process by organising an inter-parliamentary conference, which would involve relevant parliamentary committees in all member States to share experiences, exchange knowledge and best practices and to discuss how to overcome the various national obstacles.